

No. 10607

IN THE  
**United States Circuit Court of Appeals**  
**FOR THE NINTH CIRCUIT**

---

LESTER ARTHUR CORSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

**TRANSCRIPT OF RECORD**

Upon Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

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FILED

JUN 24 1943

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MORRIS LAVINE,  
620 Bartlett Bldg.,  
Los Angeles, Calif.

For Appellee:

CHARLES H. CARR,  
United States Attorney,

JAMES M. CARTER,  
Assistant United States Attorney,  
600 U. S. Post Office and Court House Bldg.,  
Los Angeles 12, Calif. [1\*]

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\*Page numbering appearing at foot of page of original certified Transcript of Record.

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 27th day of September in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Campbell E. Beaumont, District Judge.  
No. 16,260—Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant,

On motion of Ray H. Kinnison, Esq., Assistant U. S. attorney, appearing for the Government, who presents an Information to the Court in this cause, it is ordered that the said Information be filed and that the bond of the defendant be, and it hereby is, fixed in the sum of \$3500.00. [2]

\$3500

This Information contains two (2) Counts charging Lester Arthur Corson with the violation of Ration Order 5C, issued pursuant to the provisions of the Second War Powers Act of 1942. Count One charges Lester Arthur Corson with illegal possession of gasoline ration coupons and Count two charges him with unlawfully selling and transferring gasoline ration coupons. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Ten Thousand Dollars (\$10,000) or both, with no minimum penalty provided.)

Lester Arthur Corson [3]

In the District Court of the United States Southern  
District of California Central Division,

No. 16260-Crim.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LESTER ARTHUR CORSON,

Defendant.

INFORMATION.

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit:

Count One—That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully have in his possession eight hundred (800) Type "TT" gasoline ration coupons; that said Lester Arthur Corson was not the person, nor the agent of the person, to whom said gasoline ration coupons had been issued by a local War Price and Rationing Board, in violation of the provisions of Section 1394.8177 (c) of Ration Order 5C (7 Fed. Reg. 9135), as amended, issued pursuant to the provisions of the Second War Powers Act. (Pub. L. 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Two—That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid, and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully assign and transfer to Edgar E. Thompson eight hundred (800) Type "TT" gasoline ration coupons in a manner other than in accordance with the provisions of Ration Order 5C (7 Fed. Reg. 9135), as amended, in violation of the provisions of Section 1394.8177 (b) of said Ration Order 5C, as amended, issued pursuant to the provisions of the Second War Powers Act, (Pub. L. [4] 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Whereupon, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make him answer the premises aforesaid.

CHARLES H. CARR,

United States Attorney

CHARLES H. VEALE

Assistant U. S. Attorney.



VERIFICATION.

State of California

County of Los Angeles

United States of America—ss

Jona Taylor, being first duly sworn, upon oath deposes and says:

That he is an employee of the United States Government, to-wit, an Investigator for the Office of Price Administration, an agency of the United States Government; that in the course of his duty as an Investigator for the Office of Price Administration he made an investigation of the matters set forth and mentioned in the foregoing Information against Lester Arthur Corson; that he has read the above and foregoing Information and knows the contents thereof and that the matters set forth therein are true of his own knowledge.

JONA TAYLOR.

Subscribed and sworn to this 24 day of Sept. 1943, before me Edmund L. Smith, Clerk, United States District Court. By Irwin Hames, Deputy Clerk.

[Endorsed]: Filed Sep. 27, 1943. [5]

[Title of District Court and Cause.]

MOTION TO QUASH AND DISMISS THE  
INFORMATION.

Comes now the defendant herein and moves to quash the information in each count thereof upon the following grounds, to-wit:

I.

The information and each count thereof fails to charge an offense against the laws of the United States.

II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of



the Fifth Amendment to the [6] Constitution of the United States.

VI.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that the motion to quash and dismiss the information be granted.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349 [7]

Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764

Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19

United States v. Maid (D. C.) 116 Fed. 650

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887

United States v. United Verde Copper Co., 195 U. S. 207,  
25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed.  
278, 28 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712,  
33 S. Ct. 412

Connally v. General Constr. Co., 269 U. S. 385, 70 L. Ed.  
322, 46 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904,  
46 S. Ct. Rep. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46  
S. Ct. Rep. 513

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

First Nat. Bank v. United States, 46 L. R. A. (N. S.)  
1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Notice of Motion this 9th  
day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney NA

[Endorsed]: Filed Oct. 9, 1943. [8]

[Title of District Court and Cause.]

DEMURRER TO INFORMATION.

Comes now the defendant herein and demurs to the information on the following grounds, to-wit:

I.

The information and each count thereof fails to charge an offense against the laws of the United States:

II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States. [9]

VI.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that this demurrer be sustained and that he be discharged and go forth in accordance with due process of law.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant.

POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495



- Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349 [10]
- Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436
- Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211
- Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635
- United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764
- Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19
- United States v. Maid (D. C.) 116 Fed. 650
- United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480
- Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887
- United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222
- Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 28 S. Ct. 163
- United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412
- Connally v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. Rep. 126
- United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. Rep. 476
- United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513
- United States v. Reese, 92 U. S. 214, 23 L. Ed. 563
- First Nat. Bank v. United States, 46 L. R. A. (N. S.) 1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Demurrer to Information  
this 9th day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney, NA

[Endorsed]: Filed Oct. 9, 1943. [11]

---

At a stated term, to-wit: The September Term, A. D.  
1943, of the District Court of the United States of Amer-  
ica, within and for the Central Division of the Southern  
District of California, held at the Court Room thereof,  
in the City of Los Angeles on Monday the 11th day of  
October in the year of our Lord one thousand nine hun-  
dred and forty-three.

Present:

The Honorable: Ben Harrison, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for hearing on motion of defend-  
ant to quash and dismiss; hearing on demurrer, and for  
arraignment and plea of the defendant;; Ray H. Kinnison,  
Esq., Assistant U. S. Attorney, appearing for the Gov-  
ernment; Morris Lavine, Esq., appearing as counsel for  
the defendant; G. M. Fox, Court Reporter, being present  
and reporting the proceedings; the defendant, Lester Ar-

thur Corson, being present in Court on bond, now states his true name to be as charged in the Information and waives the reading of the Information.

Attorney Lavine makes a statement of the motion to quash and demurrer, and it is ordered that the Government be, and it is allowed three days to file points and authorities and the motion and demurrer to stand submitted.

It is further ordered that this cause be, and it hereby is, continued to October 18, 1943, at 9:30 A.M. for plea.  
[12]

---

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Saturday the 16th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Ben Harrison, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming before the Court: Angus McEachen, Esq., Assistant U. S. Attorney, appearing for the Government; Morris Lavine, Esq., appearing as counsel for defendant; James Marquardt, Court Reporter, being present



and reporting the proceedings; the defendant Lester Arthur Corson being absent:

The Court makes a statement and orders the motion of defendant to quash denied and the demurrer to the Information overruled; exceptions allowed and noted for defendant.

Time for plea is now set for October 18, 1943, at 9:30 A.M. [13]

---

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Ben Harrison, District Judge.

No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for plea of the defendant Lester Arthur Corson; Ray H. Kennison, Esq., Assistant U. S. Attorney, appearing for the Government; Morris Lavine, Esq., appearing as counsel for the defendant; Virginia Pickering, Court Reporter, being present and reporting the proceedings; the defendant being present in Court on bond:

The said defendant's counsel renews motion and moves to set aside the Information on the ground that it was not filed in accordance with Section 591 USCA and 995 Penal Code of the State of California, and on the ground that there was no reasonable and probable cause; also that the fifth Amendment to the Constitution of the United States was violated.

It is ordered that the motion be, and it hereby is, denied, and an exception allowed to the defendant.

The defendant now enters plea of not guilty to each of the two counts of the Information, and it is ordered that this cause be, and it hereby is, set for trial for November 2, 1943, at 9:30 A.M. [14]

---

At a stated term: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 5th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Leon R. Yankwich, District Judge.  
No. 16,260-Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for trial; James M. Carter, Esq., Assistant U. S. Attorney, appearing for the Government; Morris Lavine, Esq., appearing as counsel for the defend-

ant; Eloise Moeller, Court Reporter, being present and reporting the proceedings; the defendant, Lester Arthur Corson, being present;

Attorney Lavine renews objections to jurisdiction and on constitutional grounds. The objections are overruled, as heretofore ruled on, and an exception noted for the defendant.

Both sides answering ready, it is ordered that a jury be impaneled for the trial of this cause; whereupon, the Clerk draws the names of the following twelve jurors, who take their seats in the jury box:

- |                       |                        |
|-----------------------|------------------------|
| 1. David Fisher       | 7. Clyde H. Potter     |
| 2. A. O. Imbler       | 8. R. B. Ottun         |
| 3. Fred S. Andrews    | 9. Walter L. Myron     |
| 4. W. Sumner Brown    | 10. R. S. Wimmer       |
| 5. Chas. W. Henderson | 11. Harold Bridges     |
| 6. Thos. W. Meredith  | 12. Chauncey H. Dekker |

The jurors are examined for cause by the Court and by respective counsel, and passed for cause.

The Government passes peremptory challenge, and R. S. Wimmer is excused by the defendant on 1st peremptory challenge. It is ordered that one more name be drawn and the name of Geo. A. Blair is drawn; examined by the Court and respective counsel for cause, and passed for cause.

The Government passes peremptory challenge, and Geo. A. Blair is excused by the defendant on 2nd peremptory challenge. It is ordered that one more name be drawn, and the name of Conrad J. Fuglaar is drawn; examined for cause by the Court and respective counsel and passed for cause. [15]

The Government passes peremptory challenge, and W. Sumner Brown is excused by the defendant on 3rd peremptory challenge. It is ordered that one more name be drawn, and the name of A. W. Pessell is drawn; examined for cause by the Court and by Attorney Lavine, and passed for cause, and there being no further peremptory challenges, the jurors now in the box are accepted and sworn as the jury for the trial of this cause, viz.:

### THE JURY

- |                       |                        |
|-----------------------|------------------------|
| 1. David Fisher       | 7. Clyde H. Potter     |
| 2. A. O. Imbler       | 8. R. B. Ottun         |
| 3. Fred S. Andrews    | 9. Walter L. Myron     |
| 4. A. W. Pessell      | 10. Conrad J. Fuglaar  |
| 5. Chas. W. Henderson | 11. Harold Bridges     |
| 6. Thos. W. Meredith  | 12. Chauncey H. Dekker |

Attorney Carter makes opening statement to the jury for the Government. Attorney Lavine makes opening statement to the jury for the defendant. The reading of the Information is waived.

At 11 A.M. the Court admonishes the jury that during the progress of this trial and the recesses therein, they are not to speak to anyone or permit anyone to speak to them about this cause, or any matter or thing therewith connected; that until said cause is finally submitted to them for their deliberation, under the instructions of the Court, they are not to speak to each other about this cause, or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess.

Court reconvenes at 11:20 A.M.; all present as before; the defendant and jury are present.

The defendant demands election by plaintiff between counts 1 and 2. The demand is denied without prejudice to renewing at the close of the Government's case.

John E. Foster is called, sworn, and testifies for the Government, and U. S. Exhibits Nos. 1, 2, 3 and 4 are marked for identification.

Said witness Foster testifies further.

At 12:30 P.M. the Court reminds the jury of the admonition heretofore given, and recesses to 2 P.M.

Court reconvenes at 2:07 P.M.; all present as before; the defendant and jury are present.

Witness Foster resumes the stand and testifies further.

Jona H. Taylor is called, sworn, and testifies for the Government.

U. S. Exhibits 1, 2, 3 and 4 for identification are offered and [16] admitted into evidence, and are so marked.

The Court reminds the jury of the admonition heretofore given and excuses the jury. In the absence of the jury, Attorney Lavine for the defendant moves for directed verdict of not guilty and to strike testimony of Witnesses Foster and Taylor. The Court denies the motions and exceptions are allowed to the defendant.

Attorney Lavine renews motion that the Government elect between counts 1 and 2. The Court holds the Government must elect, and the Government elects to stand on count 2, and count 1 is ordered dismissed.

At 3:25 P.M. the jury returns into Court; all present as before; the defendant and jury are present.



The file in case No. 16,220-Crim. of the files of this Court is received by reference as defendant's exhibit, and certain portions thereof are read to the jury.

Lester Arthur Corson is called, sworn, and testifies in his own behalf. U. S. Exhibit No. 5 is marked for identification, and same is then offered and received in evidence and marked U. S. Exhibit No. 5. Said witness Corson testifies further. The defendant rests. Defendant moves for directed verdict. The motion is denied.

At 4 P.M. Attorney Carter argues to the jury for the Government. At 4:12 P.M. Attorney Lavine argues to the jury for the defendant. At 4:30 P.M. Attorney Carter argues to the jury in rebuttal for the Government. At 4:37 P.M. the Court instructs the jury on the law of the case. At 4:50 P.M. Attorney Lavine excepts to certain portions of the charge.

At 4:55 P.M. bailiffs Turner and Fuller are sworn as the officers to care for the jury, and the jury retires to the jury room to deliberate upon its verdict. At 5:55 P.M. the jury returns into Court; all present as before; the defendant and jury are present, and in response to the Court's inquiry, the foreman states that the jury has agreed upon a verdict; whereupon, the verdict is presented and read. The jury is polled, and each juror states that the verdict as presented and read is his verdict; whereupon, pursuant to the Court's order, the verdict is filed and entered, the verdict being as follows: \* \* \* \* \*

The defendant is remanded to the custody of the U. S. Marshal and his bond exonerated, and this cause is ordered continued to Tuesday, November 9, 1943, at 2 P.M. for sentence. [17]

[Title of District Court and Cause.]

VERDICT.

We the jury in the above entitled cause find the defendant Lester Arthur Corson guilty as charged in the second count of the information.

RALPH B. OTTUN,  
Foreman of the Jury.

Los Angeles, California, November 5, 1943.

[Endorsed]: Filed Nov. 5, 1943. [18]

---

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the defendant herein and moves for a new trial upon the following grounds, to-wit:

I.

The verdict is contrary to the law and the evidence.

II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

III.

The information fails to charge an offense against the laws of the United States.

IV.

Section 1394.8177(c) of Ration Order 5C (Fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

## V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create a crime.

## VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment. [19]

## VII.

Public Law 507, 77th Cong. Sess., March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

## VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

## X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.



XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the

XII.

The Court erred in its rulings in the trial of the case.

XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.

XV.

Ration Order 5C has to date been amended 82 times. The amendment or change of a regulation repeals the regulation.

(United States v. Hark, 49 Fed. Supp. 95, 97.) [20]

XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrest under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 496

Re Rehner, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349

Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 36 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Maid (D. C.) 116 Fed. 650

Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887

United States v. United Verde Copper Co., 196 U. S. 207,  
25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed.  
278, 25 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712,  
33 S. Ct. 412

Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed.  
322, 46 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904,  
46 S. Ct. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46  
S. Ct. Rep. 513 [21]

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

United States v. Patterson, 37 L. Ed. 999

United States v. Ewing, 35 L. Ed. 388

United States v. Quaritius, 267 Fed. 227

Section 951 United States Codes Annotated

Received copy of the within this 8 day of Nov. 1943.

CHARLES H. CARR

U. S. Atty.

Attorney for Plaintiff,

By James M. Carter,

Asst U. S. Atty

[Endorsed]: Filed Nov. 8, 1943. [22]

[Title of District Court and Cause.]

### MOTION IN ARREST OF JUDGMENT.

Comes now the defendant herein and moves in arrest of judgment upon the following grounds:

#### I.

The verdict is contrary to the law and the evidence.

#### II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

#### III.

The information fails to charge an offense against the laws of the United States.

#### IV.

Section 1394.8177(c) of Ration Order 5C (Fed. Reg. 9135), inherently and as construed and applied in this case, is unconstitutional in that it attempts to create a crime by executive order.

#### V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case, is unconstitutional in that it attempts to create power for an executive officer to create a crime.

#### VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that [23] amendment.

## VII.

Public Law 507, 77th Cong. Sess., March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

## VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

## X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

## XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the free use of private property.

## XII.

The Court erred in its rulings in the trial of the case.

## XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

## XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.



## XV.

Ration Order 5C has to date been amended 82 times. The amendment [24] or change of a regulation repeals the regulation. (*United States v. Hark*, 49 Fed. Supp. 95, 97.)

## XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrests under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

*Panama Refining Co. v. Ryan*, 293 U. S. 388

*United States v. Eaton*, 144 U. S. 677, 36 L. Ed. 591

*Donnelly v. United States*, 276 U. S. 512, 72 L. Ed. 678

*United States v. 11,150 Pounds of Butter*, 195 Fed. 657

*Schechter Poultry Corp. v. United States*, 295 U. S. 495

*Re Rahrer*, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

*Marshall Field & Co. v. Clark*, 143 U. S. 649, 36 L. Ed. 294, 12 S. Ct. 495

*Buttfield v. Stranahan*, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349

*Interstate Commerce Comm. v. Goodrich Transit Co.*, 224 U. S. 194, 36 L. Ed. 729, 32 S. Ct. 436

*Butte City Water Co. v. Baker*, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211

*Knickerbocker Ice Co. v. Stewart*, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

*United States v. Maid (D. C.)* 116 Fed. 650

- Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19
- United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480
- Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887
- United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222
- Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 25 S. Ct. 163
- United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412
- Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. Rep. 126
- United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. 476 [25]
- United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513
- United States v. Reese, 92 U. S. 214, 23 L. Ed. 563
- United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37
- McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280, 25 R.C.L. 1083
- United States v. Patterson, 37 L. Ed. 999
- United States v. Ewing, 35 L. Ed. 388
- United States v. Quaritius, 267 Fed. 227
- Section 951 United States Codes Annotated

Received copy of the within this 8 day of Nov. 1943.

CHARLES H. CARR

U. S. Atty.,

Attorney for Plaintiff,

By James M. Carter

Asst. U. S. Atty.

[Endorsed]: Filed Nov. 8, 1943. [26]

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 9th day of November in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable Leon R. Yankwich, District Judge.  
No. 16,260—Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for hearing (1) motion for new trial; (2) motion in arrest of judgment; and (3) sentence on count 2 of defendant Lester Arthur Corson; James M. Carter, Assistant U. S. Attorney, appearing as counsel for the Government; Morris Lavine, Esq., appearing as counsel for the said defendant, who is present; and Henry A. Dewing, Court Reporter, being present and reporting the proceedings:

Attorney Lavine presents motions, Attorney Carter replies, and it is ordered that the said motions be, and they hereby are, denied and exceptions noted.

Attorney Carter makes a statement of the previous record of the defendant and recommends maximum sentence and fine. Attorney Lavine makes a statement in behalf of the defendant. And, no legal cause appearing why judgment should not be pronounced, the Court now pronounces sentence as follows: \* \* \* \* [27]



## JUDGMENT AND COMMITMENT

District Court of the United States, Southern District  
of California, Central Division.

No. 16260, Criminal information in 2 counts for violation of Ration Order 5C. issued pursuant to the provisions of 2nd War Powers Act of 1942.

United States

v.

Lester Arthur Corson

On this 9th day of November, 1943, came the United States Attorney, and the defendant, Lester Arthur Corson, appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the jury of the offense charged in the 2nd count of the information in the above-entitled cause, to-wit: on or about September 2, 1943, in the County of Los Angeles, California, assign and transfer 800 type "TT" Gasoline Coupons in a manner other than in accord with the provisions of Ration Order 5C, (7 Fed. Reg. 9135) as amended in viol of provisions of Section 1394.8177(b), of said Ration Order 5C, as Amended, issued pursuant to 2nd War Powers Act. Pub. L. 507, 77th Cong., 2nd Session, 3/27/42, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of one year in an institution of the jail type.

It Is Further Ordered that the first count of the information be dismissed.

It Is Furthered Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH

Leon R. Yankwich

United States District Judge.

[Endorsed]: Filed this 9th day of November, 1943. [28]  
[Title of District Court and Cause.]

NOTICE OF APPEAL.

Name and address of appellant: Lester Arthur Corson, County Jail, Los Angeles, Calif.

Name and address of appellant's attorney: Morris Lavine, 620 Bartlett Building, Los Angeles, Calif.

Offense: Viol. provisions of Sec. 1394.8177(b) of Ration Order 5C as amended, issued pursuant to provisions of Second War Power Act Pub. Law 507, 77th Cong. Sess., March 27, 1942.

Date of judgment: November 9, 1943.

Brief description of judgment and sentence: one year in jail.

Name of prison where now confined if not on bail: Los Angeles County Jail, Los Angeles, Calif.

I, the above-named appellant, hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment above mentioned on the grounds set forth below:

Pursuant to Rule V, I hereby serve notice that I do not elect to enter upon the service of the sentence pending appeal.

Dated: November 9, 1943.

LESTER ARTHUR CORSON

Appellant.

MORRIS LAVINE

Attorney for Appellant. [29]

Grounds of Appeal:

1. The evidence is insufficient to support the verdict; the verdict is contrary to the law and the evidence.

2. The Court should have granted the motion for a directed verdict at the close of the Government's case and also at the close of the entire case.

3. The information fails to state a public offense against the laws of the United States.

4. There is no reasonable or probable cause upon which the information was based.

5. The Court erred in rulings made throughout the trial of the case and at the close of the case, and in its order over-ruling the motion for a new trial and the motion in arrest of judgment.

6. The Court erred in instructions given, particularly on the question of violation of law created by executive order.

7. The Court erred in ruling that Section 1394.8177 (c) of Ration Order 5C, inherently and as construed and applied in this case is constitutional when it is an attempt to create a crime by executive order.

8. The Court erred in upholding the constitutionality of the Act.

9. The Court erred in holding that the Act and Orders pursuant thereto are not violative of the Fifth Amendment to the Constitution of the United States.

MORRIS LAVINE

Attorney for Appellant.

Received copy of the within this 9 day of Nov., 1943.  
Charles H. Carr, U. S. Atty., Attorney for Plaintiff, by  
James M. Carter, Asst. U. S. Atty.

[Endorsed]: Filed Nov. 9, 1943. [30]

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[Title of District Court and Cause.]

BAIL BOND ON APPEAL.

Kow All Men by These Presents:

That I, Lester Arthur Corson, of the city of Los An-

geles, California, as principal and the National Automobile Insurance Company, a corporation, as surety, are jointly and severally held firmly bound unto the United States of America in the sum of Five Thousand Dollars, for the payment of which said sum we and each of us bind ourselves, our heirs, executors, administrators and assigns.

The condition of the foregoing obligation is as follows:

Whereas, later, to-wit, on the 9th day of November, 1943, at a term of the District Court of the United States, in and for the Southern District of California, Central Division, in an action pending in said court in which the United States of America was plaintiff and Lester Arthur Corson was defendant, a Judgment and sentence was made, given, rendered and entered against the said Lester Arthur Corson, in the above entitled action, whereas he was convicted as charged:

In count 2, of information number 16260 criminal and sentenced to one year in a jail type of institution.

Whereas, in said judgment and sentence, so made, given, rendered and entered against said Lester Arthur Corson, he was by said judgment sentenced to one year in a jail type of institution.

Whereas, the said Lester Arthur Corson has filed a notice of appeal from the said conviction and from the said judgment and sentence, appealing to the United States Circuit Court of Appeals for the Ninth Circuit; and

Whereas, the said Lester Arthur Corson has been admitted to bail pending the decision upon said appeal, in the sum of \$5000.00. [31]

Now, Therefore, the condition of this obligation are such that if said Lester Arthur Corson shall appear in



person, or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said court and prosecute his appeal; and if the said Lester Arthur Corson shall abide by and obey all orders made by the said United States Circuit Court of Appeals for the Ninth Circuit and if said Lester Arthur Corson shall surrender himself in execution of said judgment and sentence, if the judgment and sentence be affirmed by the said United States Circuit Court of Appeals for the Ninth Circuit; and if the said Lester Arthur Corson will appear for trial in the District Court of the United States, in and for the Southern District of California, Central Division, on such day or days as may be appointed for retrial by said District Court, if the said judgment and sentence against him be reversed.

Then this obligation shall be null and void; otherwise to remain in full force and effect.

It is further agreed that the provisions of Rule 13 of the District Court for summary judgment against sureties are deemed a condition of this recognizance.

LESTER ARTHUR CORSON

Principal

2666 Rutherford Dr., Los Angeles

Address

NATIONAL AUTOMOBILE

INSURANCE CO.

By Ed Groves

(Seal)

Attorney-in-Fact.

State of California,

County of Los Angeles—ss.

On this 9th day of November in the year 1943, before



me, James A. Mew, a Notary Public in and for said County and State, personally appeared Ed Groves known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the National Automobile Insurance Company, and acknowledged to me that he subscribed the name of the National Automobile Insurance [32] Company thereto as principal, and his own name as Attorney-in-fact.

(Seal)

JAMES A. MEW

Notary Public in and for said County and State.

My Commission Expires August 31, 1943.

Approves as to Form.

CHARLES H. CARR

United States Attorney.

By James M. Carter

Asst. United States Attorney.

I hereby certify that I have examined the within bond and that in my opinion the form hereof is correct and surety thereon is qualified.

MORRIS LAVINE

Attorney for Defendant and Appellant.

The foregoing bond is approved this 9th day of November, 1943.

LEON R. YANKWICH

United States District Judge.

This Bond Shall be Void if in Excess of \$5000.00.

This Bond Shall be Void if Issued After Nov. 30, 1943.

[Endorsed]: Filed Nov. 9, 1943. [33]

[Title of Circuit Court and Cause.]

AFFIDAVIT FOR ENLARGEMENT OF TIME.

State of California,

County of Los Angeles—ss.

Morris Lavine, being first duly sworn, deposes and says:

That he is the attorney for the appellant herein; that he has duly and regularly filed Notice of Appeal and that the time within which to lodge the proposed bill of exceptions under the rules would be December 9, 1943.

That affiant has taken up the matter of getting the transcript of the record prepared with the official court reporter, and has been informed that the reporter who transcribed the proceedings is out of the city and will not return for a period of about two weeks.

That in order properly to prepare the said bill of exceptions affiant will require additional time following the transcription of the same to study the record and prepare said bill of exceptions and assignments of error.

Wherefore, affiant prays that this Honorable Court enlarge the time within which appellant may file the proposed bill of exceptions and assignment of errors to and including March 15, 1944.

MORRIS LAVINE

Subscribed and sworn to before me this 1st day of December, 1943.

(Seal)

Zoa L. Zacche

Notary Public in and for said County and State.

Received copy of the within affidavit and order this 2nd day of December, 1943. United States Attorney, by James M. Carter, Asst. U. S. Atty. HM

[Endorsed]: Filed Dec. 2, 1943. [34]

[Title of Circuit Court and Cause.]

ORDER ENLARGING TIME.

Upon reading the affidavit of Morris Lavine, and good cause appearing therefor,

It Is Hereby Ordered that the appellant have to and including March 15, 1944, within which to file his proposed bill of exceptions with the Clerk of the United States District Court, together with his assignment of errors, and that the Court have such time as it may require to sign and settle the same.

Dated: December 1, 1943.

LEON R. YANKWICH

Judge

[Endorsed]: Filed Dec. 2, 1943. [35]

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[Title of District Court and Cause.]

To the Clerk of the United States District Court, Southern District of California, Central Division:

You will please prepare the following record in the above-entitled cause for the Ninth Circuit Court of Appeals:

1. Information.
2. Motion to Quash and Dismiss the Information.

3. Minutes and Rulings on Motion to Quash and Dismiss the Information.
4. Clerk's Minutes Showing Motion of Defendant to Set Aside the Information on the Ground that it was not filed in accordance with Section 591 U. S. C. A. and Section 995 of the Penal Code of California.
5. Demurrer to Information.
6. Minutes and Rulings on Demurrer to Information.
7. Verdict.
8. Motion for New Trial.
9. Motion in Arrest of Judgment.
10. Minutes and Rulings on Motion for New Trial and Motion in Arrest of Judgment.
11. Judgment and Commitment.
12. Notice of Appeal.
13. Bill of Exceptions and Assignment of Errors.
14. All Clerk's Minutes of the Proceedings.
15. This Praeipce.

MORRIS LAVINE

Attorney for Defendant

Rec'd. the within copy this 25th day of March, 1944.  
Charles H. Carr, United States Attorney, by L. L.

[Endorsed]: Filed Mar. 25, 1944. [36]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK.

I, Edmund I. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 36, inclusive, contain full, true and correct copies of: Minute Order Entered September 27, 1943; Information; Motion to Quash and Dismiss the Information; Demurrer to Information; Minute Orders Entered October 11, 1943, October 16, 1943, October 18, 1943, and November 5, 1943, respectively; Verdict; Motion for New Trial; Motion in Arrest of Judgment; Minute Order Entered November 9, 1943; Judgment and Commitment; Notice of Appeal; Bail Bond on Appeal; Affidavit for Enlargement of Time; Order Enlarging Time and Praecipe which, together with Original Bill of Exceptions and Assignment of Errors, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$15.35 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 27 day of April, 1944.

EDMUND I. SMITH,

(Seal)

Clerk

By Theodore Hocke,

Deputy Clerk



## BILL OF EXCEPTIONS

[Title of District Court and Cause.]

## NOTICE OF HEARING.

To the United States of America; Charles H. Carr,  
United States Attorney, and James M. Carter, As-  
sistant United States Attorney:

Please take notice that the within proposed Bill of Exceptions will be brought on for hearing and settlement in the District Court of the United States, Southern District of California, Central Division, before the Honorable Leon R. Yankwich, District Judge, in his courtroom in the Federal Building at Los Angeles, California, on the 17 day of April, 1944, at the hour of 10:00 A. M. or as soon thereafter as said matter can be heard.

Morris Lavine,  
Attorney for Appellant.

Dated: March 29, 1944.

Bond \$3500.

This Information contains two (2) Counts charging Lester Arthur Corson with the violation of Ration Order 5C, issued pursuant to the provisions of the Second War Powers Act of 1942. Count One charges Lester Arthur Corson with illegal possession of gasoline ration coupons and Count Two charges him with unlawfully selling and transferring gasoline ration coupons. (The maximum penalty on each Count consists of one (1) year imprisonment and/or a fine of Ten Thousand Dollars (\$10,000) or both, with no minimum penalty provided.)

Lester Arthur Corson.



[Title of District Court and Cause.]

INFORMATION.

Comes now Charles H. Carr, United States Attorney in and for the Southern District of California, Central Division, who for the United States and in its behalf, prosecutes in his own proper person, and with leave of Court first had and obtained, gives the Court here to understand and be informed as follows, to-wit:

Count One.

That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully have in his possession eight hundred (800) Type "TT" gasoline ration coupons; that said Lester Arthur Corson was not the person, nor the agent of the person, to whom said gasoline ration coupons had been issued by a local War Price and Rationing Board, in violation of the provisions of Section 1394.8177 (c) of Ration Order 5C (7 Fed. Reg. 9135), as amended, issued pursuant to the provisions of the Second War Powers Act, (Pub. L. 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Count Two.

That on or about the 2nd day of September, 1943, in the County of Los Angeles, State of California, in the District aforesaid, and in the Central Division thereof, and within the jurisdiction of this Court, Lester Arthur Corson did knowingly, wilfully and unlawfully assign and transfer to Edgar E. Thompson eight hundred (800)

Type "TT" gasoline ration coupons in a manner other than in accordance with the provisions of Ration Order 5C (7 Fed. Reg. 9135), as amended, in violation of the provisions of Section 1394. 8177 (b) of said Ration Order 5C, as amended, issued pursuant to the provisions of the Second War Powers Act, (Pub. L. 507, 77th Cong. 2d Sess., March 27, 1942); contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

Wherefore, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make him answer the premises aforesaid.

CHARLES H. CARR

United States Attorney

CHARLES H. VEALE

Assistant U. S. Attorney.

[Verified.]

[Endorsed]: Filed Sep. 27, 1943.

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[Title of District Court and Cause.]

MOTION TO QUASH AND DISMISS THE  
INFORMATION.

Comes now the defendant herein and moves to quash the information in each count thereof upon the following grounds, to-wit:

I.

The information and each count thereof fails to charge an offense against the laws of the United States.

II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135), inherently and as construed and applied in

this case is unconstitutional in that it attempts to create a crime by executive order.

### III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

### IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

### V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

### VI.

Section 1394.8177(c) of Ration Order 5c is unconstitutional as not being within the prescribed limit of congressional enactment.

### VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

### VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that the motion to quash and dismiss the information be granted.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant.

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed.

294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525,

24 S. Ct. 349

Interstate Commerce Comm. v. Goodrich Transit Co., 224

U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed.

409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L.

Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591,

12 S. Ct. 764

Interstate Commerce Comm. v. Brimson, 155 U. S. 4,  
39 L. Ed. 49, 15 S. Ct. 19

United States v. Maid (D. C.) 116 Fed. 650

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563,  
31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982,  
15 S. Ct. 887

United States v. United Verde Copper Co., 195 U. S.  
207, 25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed.  
278, 28 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712,  
33 S. Ct. 412

Connelly v. General Constr. Co., 269 U. S. 385, 70 L.  
Ed. 322, 40 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904,  
46 S. Ct. Rep. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46  
S. Ct. Rep. 513

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

First Nat. Bank v. United States, 46 L. R. A. (N. S.)  
1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Notice of Motion this 9th  
day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney U. A.

[Endorsed]: Filed Oct. 9, 1943.



[Title of District Court and Cause.]

### DEMURRER TO INFORMATION.

Comes now the defendant herein and demurs to the information on the following grounds, to-wit:

#### I.

The information and each count thereof fails to charge an offense against the laws of the United States.

#### II.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135); inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

#### III.

Public Law 507, 77th Congressional Session, March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create crime.

#### IV.

Section 1394.8177(c) of Ration Order 5C (7 Fed. Reg. 9135) is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

#### V.

Public Law 507, 77th Congressional Session, March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

#### VI.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.



VII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

VIII.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they deny the free use of private property.

Wherefore, this defendant prays that this demurrer be sustained and that he be discharged and go forth in accordance with due process of law.

Dated: October 9, 1943.

MORRIS LAVINE

Attorney for Defendant

POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 495

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshall Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed.

294, 12 S. Ct. 495

- Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349
- Interstate Commerce Comm. v. Goodrich Transit Co., 224 U. S. 194, 56 L. Ed. 729, 32 S. Ct. 436
- Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed. 409, 25 S. Ct. 211
- Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635
- United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591, 12 S. Ct. 764
- Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19
- United States v. Maid (D. C.) 116 Fed. 650
- United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480
- Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887
- United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222
- Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 28 S. Ct. 163
- United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412
- Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 40 S. Ct. Rep. 126
- United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. Rep. 476
- United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513
- United States v. Reese, 92 U. S. 214, 23 L. Ed. 563
- First Nat. Bank v. United States, 46 L. R. A. (N. S.) 1139, 124 C. C. A. 256, 206 F. 374

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37  
McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280,  
25 R. C. L. 1083

Received copy of the within Demurrer to Information  
this 9th day of October, 1943.

JAMES M. CARTER

Assistant U. S. Attorney U. A.

[Endorsed]: Filed Oct. 9, 1943.

At a stated term, to wit: The September Term, A. D.  
1943, of the District Court of the United States of Amer-  
ica, within and for the Central Division of the Southern  
District of California, held in the Court Room thereof, in  
the City of Los Angeles on Saturday the 16th day of  
October in the year of our Lord one thousand nine hun-  
dred forty-three.

Present:

The Honorable Ben Harrison, District Judge.

No. 16,260 Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on before the Court; \* \* \*

The Court makes a statement and orders the motion of  
the defendant to quash denied and the demurrer to the  
Information overruled; exception allowed and noted for  
the defendant.

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States, held at the Court Room thereof, in the City of Los Angeles on Monday the 18th day of October in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Ben Harrison District Judge

No. 16,260 Crim.

United States of America,

Plaintiff,

vs.

LESTER ARTHUR CORSON

Defendant.

This cause coming on for plea of the defendant Lester Arthur Corson \* \* \*

The defendant moves to set aside the Information on the ground that it was not filed in accordance with Section 591 USCA and 995 Penal Code of the State of California, and on the ground that there was no reasonable and probable cause; also that the fifth Amendment to the Constitution of the United States was violated.

It is ordered that the motion be, and it hereby is, denied and an exception allowed to the defendant. \* \* \*

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States of America within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Friday the 5th day of November in the year of our Lord one thousand nine hundred forty-three.

Present:

The Honorable Leon R. Yankwich District Judge  
No. 16,260 Crim.

United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for trial; \* \* \*

Attorney Lavine renews motion that the Government elect between counts one and two. The Court holds the Government must elect, and the Government elects to stand on count two, and count one is ordered dismissed.

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States of America within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Friday the 5th day of November in the year of our Lord one thousand nine hundred forty-three.

Present:

The Honorable Leon R. Yankwich District Judge  
No. 16,260 Crim.

The United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for trial; \* \* \*

Attorney Lavine renews objection to jurisdiction and on constitutional grounds. The *objects* are overruled, as



heretofore ruled on, and an exception noted for the defendant. \* \* \*

The defendant demands election by plaintiff between counts 1 and 2. The demand is denied without prejudice to renew it at the close of the Government's case. \* \* \*

The Court reminds the jury of the admonition heretofore given and excuses the jury.

In the absence of the jury, Attorney Lavine for the defendant moves for directed verdict of not guilty and to strike the testimony of witnesses Foster and Taylor. The Court denies the motions and exceptions are allowed to the defendant.

Attorney Lavine renews motion that the Government elect between counts 1 and 2. The Court holds the Government must elect and the Government elects to stand on count 2, and count 1 is ordered dismissed. \* \* \*

At 4:50 P. M. Attorney Lavine excepts to certain portions of the charge. \* \* \*

Whereupon, pursuant to the Court's order, the verdict is filed and entered, the verdict being as follows:

(Verdict of guilty, count 2.)

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[Title of District Court and Cause.]

### VERDICT.

We the jury in the above-entitled cause find the defendant Lester Arthur Corson guilty as charged in the second count of the information.

Los Angeles, California, November 5, 1943.

RALPH B. OTTUN

Foreman of the Jury

[Endorsed]: Filed Nov. 5, 1943.



[Title of District Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the defendant herein and moves for a new trial upon the following grounds, to-wit:

I.

The verdict is contrary to the law and the evidence.

II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

III.

The information fails to charge an offense against the laws of the United States.

IV.

Section 1394.8177(c) of Ration Order 5C (fed. Reg. 9135), inherently and as construed and applied in this case is unconstitutional in that it attempts to create a crime by executive order.

V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case is unconstitutional in that it attempts to create power for an executive officer to create a crime.

VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

## VII.

Public Law 507, 77th Cong. Sess., March 27, 1942, is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

## VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

## IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

## X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

## XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the free use of private property.

## XII.

The Court erred in its rulings in the trial of the case.

## XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591, United States Codes Annotated, and Section 995 of the Penal Code of California.

XV.

Ration Order 5C has to date been amended 82 times. The amendment or change of a regulation repeals the regulation. (United States v. Hark, 49 Fed. Supp. 95, 97.)

XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrests under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant.

Received copy of the within this 8th day of November, 1943.

CHARLES H. CARR

U. S. Attorney

Attorney for Plaintiff

By JAMES M. CARTER

Asst. U. S. Attorney

[Endorsed]: Filed Nov. 8, 1943.

[Title of District Court and Cause.]

MOTION IN ARREST OF JUDGMENT.

Comes now the defendant herein and moves in arrest of judgment upon the following grounds:

I.

The verdict is contrary to the law and the evidence.

II.

The trial was had upon an information without any reasonable or probable cause having been shown therefor, in accordance with the provisions of Section 591 United States Codes Annotated.

III.

The information fails to charge an offense against the laws of the United States.

IV.

Section 1394.8177(c) of Ration Order 5C (Fed. Reg. 9135), inherently and as construed and applied in this case, is unconstitutional in that it attempts to create a crime by executive order.

V.

Public Law 507, 77th Cong. Sess., March 27, 1942, inherently and as construed and applied in this case, is unconstitutional in that it attempts to create power for an executive officer to create a crime.

VI.

Section 1394.8177(c) of Ration Order 5C is void as being in contravention to the Fifth Amendment to the Constitution of the United States in that it denies this defendant due process of law guaranteed by that amendment.

VII.

Public Law 507, 77th Cong. Sess., March 27, 1942,

is unconstitutional in that it is in violation of the Fifth Amendment to the Constitution of the United States.

### VIII.

Section 1394.8177(c) of Ration Order 5C is unconstitutional as not being within the prescribed limit of congressional enactment.

### IX.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are too vague, indefinite and uncertain to constitute a public offense.

### X.

The Act and Order under it are violative of the Fifth Amendment to the Constitution of the United States in that they are an attempt to delegate the authority to create a penal offense to an executive officer.

### XI.

The Act and Order under it are violative of the Fifth Amendment to the United States Constitution in that they deny the free use of private property.

### XII.

The Court erred in its rulings in the trial of the case.

### XIII.

The Court erred in instructions given, and particularly in giving the instruction that a crime exists through violation of an executive order.

### XIV.

There was no reasonable or probable cause for filing the information. The proceedings violated Section 591. United States Codes Annotated, and Section 995 of the Penal Code of California.



## XV.

Ration Order 5C has to date been amended 82 times. The amendment or change of a regulation repeals the regulation. (United States v. Hark, 49 Fed. Supp. 95, 97.)

## XVI.

The information was sworn to by a person not such an officer of the United States as is empowered to make arrests under the laws of the United States.

Dated: November 8, 1943.

MORRIS LAVINE

Attorney for Defendant

(Same receipt as on Motion for New Trial.)

## POINTS AND AUTHORITIES.

United States Constitution, Articles I and II, creating a legislative and executive branch of the government.

Panama Refining Co. v. Ryan, 293 U. S. 388

United States v. Eaton, 144 U. S. 677, 36 L. Ed. 591

Donnelly v. United States, 276 U. S. 512, 72 L. Ed. 678

United States v. 11,150 Pounds of Butter, 195 Fed. 657

Schechter Poultry Corp. v. United States, 295 U. S. 496

Re Rahrer, 140 U. S. 545, 35 L. Ed. 572, 11 S. Ct. 865

Marshal Field & Co. v. Clark, 143 U. S. 649, 36 L. Ed.

294, 12 S. Ct. 495

Buttfield v. Stranahan, 192 U. S. 470, 48 L. Ed. 525, 24 S. Ct. 349

Interstate Commerce Comm. v. Goodrich Transit Co., 224

U. S. 194, 36 L. Ed. 729, 32 S. Ct. 436

Butte City Water Co. v. Baker, 196 U. S. 119, 49 L. Ed.

409, 25 S. Ct. 211

Knickerbocker Ice Co. v. Stewart, 253 U. S. 156, 64 L. Ed. 837, 40 S. Ct. 438, 11 ALR 1145, 20 N. C. C. A. 635

United States v. Maid (D. C.) 116 Fed. 650

Interstate Commerce Comm. v. Brimson, 155 U. S. 4, 39 L. Ed. 49, 15 S. Ct. 19

United States v. Grimaud, 220 U. S. 506, 55 L. Ed. 563, 31 S. Ct. 480

Todd v. United States, 158 U. S. 282, 39 L. Ed. 982, 15 S. Ct. 887

United States v. United Verde Copper Co., 196 U. S. 207, 25 S. Ct. 222

Williamson v. United States, 207 U. S. 425, 52 L. Ed. 278, 25 S. Ct. 163

United States v. George, 228 U. S. 15, 57 L. Ed. 712, 33 S. Ct. 412

Connelly v. General Constr. Co., 269 U. S. 385, 70 L. Ed. 322, 46 S. Ct. Rep. 126

United States v. Noveck, 271 U. S. 201, 70 L. Ed. 904, 46 S. Ct. 476

United States v. Katz, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. Rep. 513

United States v. Reese, 92 U. S. 214, 23 L. Ed. 563

United States v. Wiltberger, 5 Wheat. 76, 5 L. Ed. 37

McCord v. State, 2 Okla. Crim. Rep. 214, 101 Pac. 280, 25 R. C. L. 1083

United States v. Patterson, 37 L. Ed. 999

United States v. Ewing, 35 L. Ed. 388

United States v. Quaritius, 267 Fed. 227

Section 951 United States Codes Annotated

[Endorsed]: Filed Nov. 8, 1943.

At a stated term, to wit: The September Term, A. D. 1943, of the District Court of the United States of America within and for the Central Division of the Southern District of California, held in the Court Room thereof, in the City of Los Angeles on Tuesday the 9th day of November in the year of our Lord one thousand nine hundred forty-three.

Present:

The Honorable Leon R. Yankwich District Judge.

No. 16,260 Crim.

The United States of America,

Plaintiff,

vs.

Lester Arthur Corson,

Defendant.

This cause coming on for hearing (1) motion for new trial; (2) motion in arrest of judgment; and (3) sentence on count 2; Atty. Lavine presents motions; Attorney Carter replies, and it is ordered that the said motions be, and they hereby are, denied, and exceptions noted. \* \* \* And, no legal cause appearing why judgment should not be pronounced, the Court now pronounces sentence as follows:

(Judgment)

[Title of District Court and Cause.]

Judgment and Commitment.

Criminal: Information in 2 counts for violation of U. S. C. Title Ration Order 5C issued pursuant to the provisions of 2nd War Powers Act of 1942.

On this 9th day of November, 1943, came the United States Attorney, and the defendant Lester Arthur Corson appearing in proper person, and with counsel, and

The defendant having been convicted on verdict of the jury of the offense charged in the 2nd count of the information in the above-entitled cause, to wit: on or about September 2, 1943 in the County of Los Angeles, California assign and transfer 800 type "TT" Gasoline Coupons in a manner other than in accord with the provisions of Ration Order 5C, (7 Fed. Reg. 1935) as amended in viol. of provisions of Section 1394.8177(b), of said Ration Order 5C, as amended issued pursuant to 2nd War Powers Act, Pub. L. 507, 77th Cong. 2nd session, 3/27/42 and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General or his authorized repre-

sentative for imprisonment for the period of one year in an institution of the jail type.

It is further ordered that the first count of the information be dismissed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH  
United States District Judge

The Court recommends commitment to

Filed this 9th day of November 1943.

(Signed) EDMUND L. SMITH  
Clerk

(By) LOUIS J. SOMERS  
Deputy Clerk



[Title of District Court and Cause.]

NOTICE OF APPEAL.

Name and address of appellant: Lester Arthur Corson,  
County Jail, Los Angeles, Calif.

Name and address of appellant's attorney: Morris  
Lavine, 620 Bartlett Building, Los Angeles, Calif.

Offense: Viol. provisions of Sec. 1394.8177(b) or  
Ration Order 5C as amended, issued pursuant to pro-  
visions of Second War Power Act Pub. Law. 507, 77th  
Cong. Sess. March 27, 1942.

Date of judgment: November 9, 1943.

Brief description of judgment and sentence: One year  
in jail.

Name of prison where now confined if not on bail:  
Los Angeles County Jail, Los Angeles, Calif.

I, the above-named appellant, hereby appeal to the  
United States Circuit Court of Appeals for the Ninth  
Circuit from the judgment above mentioned on the  
grounds set forth below:

Pursuant to Rule V, I hereby serve notice that I do  
not elect to enter upon the service of the sentence pend-  
ing appeal.

Dated: November 9, 1943.

LESTER ARTHUR CORSON

Appellant

MORRIS LAVINE

Attorney for Appellant

## Grounds of Appeal:

1. The evidence is insufficient to support the verdict: the verdict is contrary to the law and the evidence.

2. The Court should have granted the motion for a *direct* verdict at the close of the Government's case and also at the close of the entire case.

3. The information fails to state a public offense against the laws of the United States.

4. There is no reasonable or probable cause upon which the information was based.

5. The Court erred in rulings made throughout the trial of the case and at the close of the case, and in its order overruling the motion for a new trial and the motion in arrest of judgment.

6. The Court erred in instructions given, particularly on the question of violation of law created by executive order.

7. The Court erred in ruling that Section 1394.8177(c) of Ration Order 5C, inherently and as construed and applied in this case is constitutional when it is an attempt to create a crime by executive order.

8. The Court erred in upholding the constitutionality of the Act.

9. The Court erred in holding that the Act and Orders pursuant thereto are not violative of the Fifth Amendment to the Constitution of the United States.

MORRIS LAVINE

Attorney for Appellant.

Received copy of the within this 9th day of November, 1943.

CHARLES H. CARR

U. S. ATTORNEY

Attorney for Plaintiff

By JAMES M. CARTER

Asst. U. S. Attorney

[Endorsed]: Filed Nov. 9, 1943.

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When the case was called before Judge Ben Harrison on preliminary motions Attorney Morris Lavine stated to the court that there were 73 amendments to the regulation involved in this case and that it was impossible for citizens to keep up with the changes and that the effect of these constant changes was to deny to the citizens due process of law in failing to inform them of the regulation so that they would know when they were in violation thereof, and that such procedure violated the Fifth Amendment to the Constitution of the United States.

All objections were overruled, and exception noted. [1-a\*]

The Court: United States vs. Lester Arthur Corson for trial.

Mr. Carter: Ready for the government.

Mr. Lavine: At this time, in order to preserve our record, we again renew our objection on the jurisdiction of the Court to proceed on the ground that the charges here do not allege a public offense, and on the various constitutional questions which we have urged.

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\*Page numbering appearing at foot of page of original Bill of Exceptions.

The Court: The motion will be denied.

Mr. Lavine: Exception.

The Court: I have examined the record. It is not necessary under our rules to renew these motions. You have made a motion to quash and it has been ruled upon. And it is not necessary to preserve the record by doing it again. It is only when you move to make a motion for the insufficiency of the evidence to protect your case at the close of the government's case, but otherwise you do not have to renew it.

It have read the record and not only agree with the conclusion, but have so ruled. I have held that the OPA is a Federal enactment and violations thereof can be punished as a matter of law. I did it in the Kahn case in San Diego, and in others and so there is no use taking time—

Mr. Lavine: I appreciate that, but when I made my original objections the government came back with that these acts under the OPA were under the Second War Powers [1] Act and the directives which came as a result of that Second War Powers Act followed in the line of that Act, and not specifically under the Emergency Price Control Act of 1942, but under the Second War Powers Act.

The Second War Powers Act, your Honor, gives the President the right to issue directives and any violation of his particular order would, if that is valid legislation, be a violation of the section. But here under the ex-

planation given by the government there was no Presidential order, and the language of the Second War Powers Act seems very specific in Section 2-A-2 that it must be pursuant to his order and his power and his direction.

There is no showing, and I find no legislation anywhere, and no order of the President relating to these particular Acts and under the government's contention there is a delegation of power to someone else, and then there is a delegation of power to someone else, and that that someone else then issued a directive.

The Court: It is not material in a governmental order to set forth exactly the source of authority so long as it is set forth. The source of the statute which is being violated is set forth, the rest becomes a question of law.

Mr. Lavine: Exception, your Honor.

(Jury duly impaneled and sworn.) [2]

Mr. Lavine: At this time the defendant demands an election, if your Honor please, as between count 1 and 2.

Mr. Carter: I don't think the government will be required to elect, if at all, until the conclusion of the case.

The Court: It is my policy, if there is such a situation, to do it in the light of the testimony rather than in advance, because until the evidence is in we do not know whether the possession implied is the possession implied in count 1 or count 2. So I will deny it without prejudice, and allow you to renew it at the end of the government's case.

Mr. Lavine: Exception. [3]



JOHN E. FOSTER,

a witness called by and on behalf of the Government,  
being first duly sworn, was examined and testified as  
follows:

Direct Examination

By Mr. Carter:

I live at 6233 DeLongpre Avenue, Hollywood, California. I am an investigator for the Office of Price Administration, an agency of the United States Government. I have been acting as such investigator approximately two years. I know Edgar E. Thompson. On September 2, 1943, I arrested Thompson.

Mr. Lavine: I object to that as irrelevant, incompetent and immaterial.

Mr. Carter: It is a preliminary matter.

The Court: A preliminary matter, very well.

By the witness:

After Thompson had been arrested on September 2, 1943, I searched his person. When this search was made Investigator Taylor, who also works with me, was with me.

Mr. Lavine: I object to all these matters with reference to searching Thompson as irrelevant, incompetent and immaterial, and not within the issues of this case.

The Court: I will reserve your right to strike, unless the acts are ascribed to this defendant. Whether or not that may be, I will preserve your right to strike unless [4] there is a connection with the defendant.

Mr. Lavine: May we have a running objection with relation to this testimony in regard to Thompson?

The Court: Yes.

Mr. Lavine: And there will be an exception to any ruling permitting it.

(Testimony of John E. Foster.)

By the witness:

I searched him on four different occasions on that day. The last time I searched him on that day was on Clark Street, I believe, right off Sunset Boulevard. I searched his car and he and his wife. He then had a convertible Buick coupe. I was searching to find out whether or not he had any gasoline rationing coupons in his possession, or—in his immediate possession or in the automobile. I did not find any gasoline rationing coupons of any kind either in the possession of his wife or in his possession, or in the car. The hour that I made this search was 6:30 p. m.

The part of town this street is in that I referred to is known as the county strip, out towards Beverly Hills.

Thompson left the presence of Taylor and myself; drove in an automobile. We followed him thereafter; he met the defendant Corson. Until the time that Thompson met Corson he was under my observation at all times. I followed the Thompsons in another automobile that we had, a Studebaker, I and Investigator Taylor. Thompson drove East on Sunset Boulevard approximately two blocks, I believe, to 8801 Sunset [5] Boulevard. At 8801 Sunset Boulevard there is a used car lot. I believe the address was 8801 Sunset Boulevard. It is on the north side of Sunset Boulevard. It is a corner lot. The place where I searched Thompson was approximately two blocks west of 8801 Sunset Boulevard.

Thompson drove west on Sunset and turned north on the side street off Sunset and pulled into the parking lot, or attempted to. But there was a chain across. And he then backed up into this side street, going north up a

(Testimony of John E. Foster.)

hill—it doesn't go all the way through on Sunset, there is quite a steep hill—and he backed up this hill and pulled down just about even with this driveway facing south on this side street parallel with the parking lot. At that time the position of his car was headed towards Sunset Boulevard and immediately north of Sunset and immediately adjacent to the parking lot.

Thompson got out of the car, and his wife moved over into the driver's seat. We had parked right almost directly across the street from this parking lot, where there are a few stores and a bar. And there was a little half—semi-circle in there where they park automobiles and we had pulled into that place, and faced almost directly across the parking lot, and pulled our car facing the parking lot so that we could see all angles of the parking lot. We were on the south side of Sunset Boulevard directly across the street from the parking lot. Investigator Taylor was with [6] me; I was in the back seat and Investigator Taylor was in the front seat.

Thompson got out of the car and walked over on the lot and no one approached him for a few seconds, so he walked over to another lot that was just adjacent to that on the west of this particular lot. He was still in my view. He walked along the sidewalk and there was a man over in the next lot. He walked over and engaged in conversation with this man there for probably three or four minutes. The man was Jerry Davis. Then they didn't shake hands even. That was just a conversation.

Next this Cadillac drove up, came west on Sunset Boulevard and drove up right half way in the street and half way in the driveway on Sunset there, near 8801.

(Testimony of John E. Foster.)

The front part, that would be on Sunset. The car when it was parked with relation to the adjoining parking lot was probably not more than ten feet from the adjoining lot. It was just an imaginary dividing line between the two lots. However, there is a sign there which shows that it is the dividing line, because one is Jerry Davis and the other is 8801, I believe.

After this Cadillac car drove up the defendant, Mr. Corson, got out of the driver's seat and walked over. There was another man with him, sitting in the car, and he didn't get out at that time. Corson got out, walked over to Davis and Thompson and talked to them for a few minutes. None of them made contact with their hands or anything else. They [7] didn't even shake hands. They talked for probably a couple of minutes, and then Corson walked back to his own lot. He was on the sidewalk, on Davis' lot at the time, and they all walked toward 8801, and then Davis and Thompson stayed back for just a minute, and then Corson went on in, and he went over and stood in front of a little shack on his lot for a couple of seconds. Thompson was in full sight of us.

And then Davis and Thompson both walked over on 8801, on the lot there, and stood in front of this little unpainted shack that was on the lot there, and talked; and then Davis—finally Corson left and went to the back of the lot alone for a minute, and at that time Davis left Thompson and walked back on his own lot, leaving Thompson there by himself. That is, they were about ten or fifteen feet from this Cadillac at the time where this other man was sitting.

Corson then came back—he had gone toward the shack



(Testimony of John E. Foster.)

on the lot—came over and reached in his inside coat pocket and took out a white folded package about this long (indicating), and I would say about that wide (indicating). I would say it was 12 to 14 inches long and probably 3 to 4 inches wide, and handed it to Thompson. They were a good foot or a foot and a half apart at that time, and he had to reach out and give it to Thompson. Thompson took it and started to put it inside of his pocket, but he had a loafer jacket on, and so he started to put it in here (indicating) and instead he put it here (indicating). (Witness indicates [8] first that Thompson attempted to put the paper on the inside, right inside of his jacket and thereafter put the paper in the right, outside right coat pocket.)

At the time this happened just Thompson and Corson were there. The other man was sitting in the car, but he did not make contact. Davis was out of the picture then.

We immediately started the car. Investigator Taylor was the driver, and I told him to start the car and get over there. Thompson and Corson then walked together toward Thompson's automobile, which was east of them at the time. At the time these papers that I have talked about passed from Corson to Thompson, and as to where Thompson and Corson were standing with relation to my car—the only way I can say is sort of kind of oblique. They weren't directly in front of us, they were on a angle, about like this (indicating) from our automobile. I would say about 15 degrees off of straight ahead, and across the street. Our car was headed into the street.

We immediately started the car and went across the street and they were walking then east, so we pulled east, and pulled up right in front of the Thompson car, and



(Testimony of John E. Foster.)

headed our car into the driveway on the side street—on the east side of 8801, and that made them coming like directly toward us. We were in the driveway because there was a chain across there. We were on the sidewalk and the driveway. We jumped out of the car and I grabbed Mr. Corson and [9] Investigator Taylor grabbed Thompson. I knew beforehand where Thompson was going at the time I went to this location, notwithstanding that my partner Taylor grabbed Thompson.

I told Taylor to get the package, which he did. It was in the right hand pocket, and also told him to search him thoroughly, and he found there was no inside coat pocket on this loafer jacket, and he reached in the right hand pocket where we had seen him place this, these sheets or this package that he had received, and pulled out these coupons. Taylor pulled the coupons out of Thompson's right coat pocket—or jacket pocket.

After I had searched Thompson, and up to the time that Taylor and I, in the presence of Corson, took the articles I described out of Thompson's pocket, he had never been out of the vision of either of us even for a second.

(Thereupon, the documents referred to were marked as Government's Exhibits 1, 2, 3 and 4 for identification.)

By the witness:

As to this sheet of gasoline ration T coupons, marked Government's Exhibit 1 for identification, I have seen that before. I first saw that when Investigator Taylor pulled it from Thompson's right hand jacket pocket. I have just described the time and the circumstances of that.

(Testimony of John E. Foster.)

As to Government's Exhibit 2 for identification, a second sheet, I saw this at the same time and under the same conditions as a part of the papers pulled out of Thompson's [10] pocket.

As to Government's Exhibit 3 for identification I have seen that before. It was with the other papers at the same time.

As to Government's Exhibit 4 for identification, that was also part of it.

I am familiar with the various types of coupons issued by the Office of the OPA. I have been an investigator for two years with them. I have charge of the transportation department. That is the department that concerns itself with gasoline rationing. The TT coupons, better known as double T, are for fleet owners who have trucks and each coupon is good for five—in exchange for five gallons of gasoline.

On the large sheets, Government's Exhibits 1, 2 and 3 for identification, I believe there were 240 on each large sheet.

On Government's Exhibit 4 for identification I believe there were 80. However, I am not positive about that, what were on this smaller sheet, now. That makes a total of 800 coupons.

(Witness asked to fold the papers in the manner in which they were folded when he saw them passed from Corson to Thompson.)

By the witness:

They were folded in just such a manner as this (demonstrating a fold about 12 inches long and 3 or 4 inches [11] wide.) Thompson made further folds in

(Testimony of John E. Foster.)

them when he took them in his possession. This is the type package that was handed from Corson to Thompson. However, when Thompson put them in his pocket they were folded like this (indicating) and stuffed down, because they were still approximately sprung like this; when they were pulled out of his pocket they sprung back like this (indicating).

As to whether I observed where Corson got the paper he handed to Thompson, he got them from an inside coat pocket on the left side.

The arrest was made at that time. Not at the time that he pulled it from his coat, no; at the time that we reached the spot, that is when the arrest was made.

There were some conversations that occurred in the presence of Corson and myself at or about that time. Besides myself and Corson, Investigator Taylor and Thompson were present. This occurred about a **quarter of seven**.

Q. And what was said at that time by any of those present?

Mr. Lavine: I object to that as no proper foundation laid.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: I told him that we had witnessed the transaction and that we had been after him for a long time, and that—and then put him in the car and he wanted to [12] know what it was all about.

Q. By Mr. Carter: Was anything said by Thompson in the presence of Corson?

A. I asked Thompson where he got these things—

(Testimony of John E. Foster.)

Mr. Lavine: I object to that as incompetent, irrelevant and no foundation laid, no proper foundation laid.

Mr. Carter: In the presence of the defendant.

The Court: It was in the presence of the defendant? Overruled.

Mr. Lavine: I did not object on the ground that it was hearsay; I objected on the grounds there was no proper foundation laid.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Witness: I asked him where he got these coupons, and he pointed toward Corson and says, "Him."

The Court: Did Corson say anything?

The Witness: Corson denied that he knew anything about it at all.

#### Cross-Examination

By Mr. Lavine:

I did not know that Mr. Thompson was an ex-convict. That was the conclusion, but I did not know it. I had not been following him for some days. I never followed him before that day. Never saw Thompson before September 2nd in my life. I first took Thompson into custody that day, very [13] close to noon. Noon time of September 2nd. At the time I took him into custody I did not tell him if he would take me over to Mr. Corson's place that I would see that he was dealt leniently with. At no time did I tell him that. I did not tell him that if he gave me further information that I would see that he got a very light sentence, or no sentence at all.

Thompson did not, just out of a clear sky, take us over to Mr. Corson's place of business. I can't tell you how



(Testimony of John E. Foster.)

it happened. It would be a guess on my part. I can tell you what happened.

I met Thompson then twice, one time on September 2nd. I met him at a service station in Manhattan. That was not the service station of an E. Thompson. The man who run that is Luxton Arneson. Thompson then had in his possession some ration stamps. I took them from his wife. His wife did not have some ration stamps in her possession. He threw them to her and I grabbed them. They were all kinds, TT's, T's and B's, I think. And there could have been other kinds. I am not positive at the moment. I placed Thompson under arrest at that time. I did not take his wife into custody at that time. I released her. I did not tell Thompson that I would release her if he would take me over to this place in Hollywood. I released Mrs. Thompson almost immediately. In fact, we never did arrest Mrs. Thompson. She was never under arrest. So we didn't have any hold on her. [14]

As to whether she had these stamps in her possession, well, we witnessed him throw them to her, so we had nothing on her; he had the stamps.

We had a conversation with him at that point. We did not tell him if he would take us to Hollywood we would then deal leniently with him. We did not know at that time the source of the tickets. I did not at that time make arrangements to drive with Thompson to any other place. We took him first back to his home in Long Beach, and from his home we brought him to the Federal Building and had him arraigned up to the United States Commission on the 2nd of September.



(Testimony of John E. Foster.)

He said that he had an appointment to buy some more stamps on that day. He said if you boys hadn't got me when you did you would have got me getting the stamps, because I am due there now, and he said that it was on the strip, and that it was a car lot. He didn't know the man's name, only Doc—he said that was all he knew him as. And so we asked him if he would keep his appointment with this man and he said he would. And so we went out with him then there to this lot, as I related prior, and he went through with it.

When I got them after he had kept this appointment with this man Investigator Taylor, Thompson and myself were present. There was no other official of the OPA.

Mr. Taylor said quite a few things in my presence to Mr. Thompson. Mr. Taylor did not inform him that if he kept his appointment that he would be dealt leniently with. It is [15] my contention that with no argument whatsoever Mr. Thompson then agreed to keep his appointment and have us follow him. We didn't at any time tell Thompson to go out there and keep his appointment. As a matter of fact, we explained to him in his position that he didn't have to do anything, he didn't have to co-operate, but if he wanted to it is all right, we wouldn't promise him any leniency whatever. We made no reference to that. In fact, he stated to us that he had been in prison before and he did not know why he had done this, and that since he had been out he got married and had his wife, and he would do anything to stay with his wife. And we told him that he didn't have to do a thing, that he was just as free—when he walked out of

(Testimony of John E. Foster.)

the Commissioner's office—just as free as we were, and he stated that he would go through it anyway.

I said that he had been recently married, that he wanted to be with his wife. He talked about her quite a bit and said that he wanted to stay with his wife, and we told him we had no jurisdiction over it whatever, what he would get, and could give him no leniency or promise him any.

We had not then filed the five charges against him for illegal possession. He had been arraigned on the complaint only. I had sworn to that complaint. I did not charge him with illegal sale and possession of these rationing coupons. I charged him with violation of rationing order 5-C. As to whether there were five different counts, they [16] had taken care of that. Our attorneys do it, and I had made no contact with that office during the day. We left the office before it was open and I made no contact even by telephone.

His wife heard some conversation between Thompson and I at the time he was taken into custody, and his wife heard some conversation between he and I when we were driving from Long Beach. I rode in their car and Mr. Taylor drove the other car from Long Beach to the Federal Building; and his wife probably heard the conversation while we were on Clark and Sunset Boulevard, prior to going to Mr. Corson's lot.

I rode in Thompson's car. Thompson told me that he sold one car that belonged to him, and the reason he told us that was because we knew that he had owned this car and questioned him about it, a Buick that he had been driving previously. He said he owned the automo-

(Testimony of John E. Foster.)

bile he was then in, and he said he had sold another car to this used car lot prior to that time. He told me what kind of a car he had sold there; we knew what kind it was. It was a Buick convertible sedan.

Thompson and Arneson, who were both in Manhattan, were reported for dealing in coupons, and we checked those boys up, and they described this car which was selling them to them, and later Arneson got the license number of this Buick automobile, and we traced it down and saw that it be- [17] longed to a young couple, and asked them where the car was, and they said they had sold this convertible. And that is how we got a line on Thompson. They had sold this convertible to Thompson. So that that was the second car he had been in. And so we went to see him again, and found Thompson, and after we got Thompson we asked him what he had done with the other car he was in and he said he had sold it, and related who he had sold it to. He said he had sold it to Doc, the man where he got the coupons. He said, I believe, he had sold it for \$1850. However, that is just my recollection. I did not make a note of it at the time because it had no bearing on it.

I saw that car over on the lot after I went over to that lot. It was still on the lot. That was the lot that I then was observing to observe Mr. Corson. We did not ever search that car. We did not search that car prior to making the arrest of Mr. Corson. We did not search it afterwards.

I left the Commissioner's office that afternoon with Mr. Thompson at, I would say 4:30—4:00 or 4:30. From there we went out on the strip. I went out on the strip

(Testimony of John E. Foster.)

along about 4:00 or 4:30. In fact, I rode with Mr. Thompson. His wife was also in his car. She rode all the way out there.

We drove to Clark and Sunset and there we went through the formality of searching Mr. Thompson and his wife and his automobile, because he was going in to see Mr. Corson, and [18] followed him to Mr. Corson's lot whilst he made contact with him, and there was nothing passed between them, and Thompson drove out, and we followed him back to Clark and Sunset, and asked him if he had anything, and he said he did not. And we did not search him because we had seen him at all times and he had not even come in contact with Mr. Corson or anyone else.

I had parked opposite this lot. We were in a little, light Studebaker Tudor. At the time that we were parked we had our doors closed. I was sitting on the right hand side. I was across the street from this lot, from 8801. I don't know what the width of the street is. I would judge we were somewhere from 100 to not more than 125 feet from the spot where Mr. Corson handed this bundle to Thompson. I would say not more than 125 feet, if that much.

There was no one else on the lot at the time. As to whether there was a man sitting in an automobile—he wasn't on the lot. This man wasn't—he jumped out and ran at the time we took Mr. Corson and Mr. Thompson in, but that was not on the lot, that was on the sidewalk, in the driveway, and partially in the street; because later on we moved the car in the lot so it wouldn't be on the street.



(Testimony of John E. Foster.)

There were on the lot probably ten—twelve cars. I moved from Thompson's car into another automobile. We moved from Thompson's automobile into another automobile at Clark and Sunset. When Thompson got out and went over there we [19] had not been in the car from—for two blocks west, for a matter of two blocks. We were right directly behind Thompson's car in the other automobile. There were no cars between his car and ours.

We stopped our car prior to when he stopped his car because we pulled off to the right in the parking lot, and he went up to the corner and turned up into the driveway, and we pulled in and parked, and was watching them when they pulled up the hill and backed down. His car was not on the used car lot where Corson was located when it was stopped, it was in the street. He did not afterwards move it into the lot. He did not at any time move it into the lot, on that particular trip. There was a trip prior when he went to Mr. Corson to make arrangements. That occurred between 4:30 and 5:00 o'clock.

I made two trips to this lot. I did not send him in to make those arrangements; he went in to make them. I saw Corson at that time on the first occasion. I also saw on the lot at that time two other men. I saw Thompson talking to them.

As to whether Thompson was talking to three men on the lot on the first occasion that I went in. Thompson talked to Corson only on the first occasion. It didn't appear that he was talking to the other two men. I wasn't within hearing distance, but he was facing Corson and



(Testimony of John E. Foster.)

Corson had been doing something with his automobile, because he got out of [20] the car and Thompson stood there and they stood and talked, but whether one of these men when they walked by talked to him, I don't know; but they didn't stand there and enter into any conversation with him, no. But whether they spoke to him or he spoke to them, I couldn't tell you as to that.

All of us came back around 6:30. It was still very light. It was probably two minutes after I got there on the second occasion before I saw Thompson go into the lot. We were directly behind Thompson on that second occasion. We were parked before he was. We were behind him, but we were coming down Sunset Boulevard. We pulled in through this lot to our right, and Thompson came to the corner, and he had to turn around and back up, and by that time we got our car parked—by the time he got his car facing in the opposite direction, we were already parked and watching him.

Thompson couldn't have gone into the lot. There was a chain across the driveway there. So all he did was to pull into the driveway and pull his front wheels around on the sidewalk, and he backed out. There was also another car right alongside on this driveway, I remember, because it was a convertible Ford coupe, and it was parked in there so the cars couldn't get in there.

This wasn't in front of the lot. This car that was across the driveway. That was on the side street, on the east side of the lot, which is not the front. I mean the [21] point at which Thompson marked his car. He was not on Sunset Boulevard; Thompson was parked on the side street. I was parked on the south side of Sunset Boule-

(Testimony of John E. Foster.)

vard, facing Sunset Boulevard. From the point where I saw Thompson go into the lot it would probably be 140 feet—between 125 and 140 feet.

Thompson walked across the corner of the lot—got on the sidewalk and walked straight on down the sidewalk to where Jerry Davis was standing, and entered into the conversation with him.

Jerry Davis was a dark complected man, six feet, he was slight, with a thin face.

I did not see Thompson go into the Jerry Davis lot. He stood in front of the lot on the sidewalk and talked to Jerry Davis. He talked to Jerry Davis around two or three minutes. Corson came up and talked to them. All three of them were engaged in conversation afterwards.

Corson was there with one man, and they parked half way up the lot, up toward the rear of 8801, and Corson got out of the car and walked over to where Jerry Davis and Thompson were talking and talked to them for about a minute or two, and then walked to his own lot. All that I saw Corson hand to this man was some paper. I couldn't tell what it was from the distance that I was.

As to whether Corson was facing me or had his back to me, I wouldn't say either. I could see daylight right [22] between them. One of them was facing east—Thompson was facing east, and Corson was facing west when he handed the paper to Corson, and we could see right between the two of them. I was 140 feet away from where Thompson parked the car and entered the lot, but not more than 115—between 115 and 125 feet at the very most from where this took place. I could

(Testimony of John E. Foster.)

not hear any conversation. I did not hear any conversation between Jerry Davis and Thompson.

After I came up to Corson I said, "I have been trying to get you for a long time, and now I have got you."

I did not make any recommendation to the United States District Attorney as to the sentence to be imposed upon Thompson. I knew that Mr. Thompson only received a sentence of 90 days. I didn't know that that was in return for his co-operation with me.

When these stamps were taken off of Thompson they were in his right outer jacket pocket. They were all together, and then they were folded up in a manner. They were folded in such a manner that the back of them was blank. That is to say, the outer portion of it did not show the T tickets. We did not at that time make any marks on these tickets. We didn't mark them. They had a mark on them where they appeared to be under a floorboard—a floor mat. That wasn't any mark that I made.

Thompson did not signal to me when he put these stamps in his pocket. We did not arrest or re-arrest Thompson. We [23] took him with us, but we did not re-arrest him. I did not say anything about re-arresting him at all at the time. I didn't have him. Investigator Taylor took him in. Investigator Taylor did not say, "I am arresting you," to my knowledge.

I at no time other than as I have described it, ever found any ration coupons in the actual possession of Mr. Corson during this case. Immediately after arresting Mr. Corson we searched his automobile. It was locked—we never did get into the back end of it because we would

(Testimony of John E. Foster.)

have to break in—it was quite an expensive automobile. We did not break into it. We searched the automobile, all except the back end, which we did not enter. We searched the lot after a fashion. We searched the automobiles that Mr. Corson had been driving.

We did not follow Mr. Corson's automobile for two or three days after that. We did not go into a parking lot on Spring Street and go through the automobile. At no time within my own actual knowledge or observation did I actually see Mr. Corson transfer over to Mr. Thompson or anyone else, anything other than what I claimed I saw, which was a group of papers—that package that he handed him was the only thing that I saw. We had been looking for Mr. Corson on a warrant, but I hadn't seen him prior to that day.

As to whether I couldn't see where Mr. Corson was in the lot until after I actually saw him talking to Thompson, [24] I saw him at all times. He went up to the back of the lot until Davis left, and then he came back down. Mrs. Thompson did not get out of the automobile to my knowledge, she never did. She was sitting all the time this was going on in Thompson's automobile, on the side street.

When we got Corson we took him into our car. He had at all times subsequent to that time denied that he had any irregular possession of any ration stamps. He had at all times subsequent to that time denied that he had ever transferred or signed any ration stamps illegally.



(Testimony of John E. Foster.)

Redirect Examination

By Mr. Carter :

On your direct examination you questioned me only about the second trip in which I followed Thompson to the lot on Sunset Boulevard. There were two trips out there. Went out the first time around 4:30, or quarter to five. We did search him at his car before he made that trip. He returned from that first trip probably ten minutes later, between five and ten minutes later. It did not take but a couple of minutes.

I again searched him and his car before he went the second time.

From the time that Thompson left on the first trip to go to 8801 Sunset he was out of my sight from that time on until Corson was arrested. He went in one place to eat and we went into another. That was prior to the second trip. [25] On the second trip he never was out of our sight from the time we searched him until we arrested Corson. While I was sitting outside of 8801 Sunset Boulevard I had an instrument with me to assist me in observing. I had binoculars. We used them off and on. I know what happened to the man who was with Corson when Corson drove on the lot. He jumped out of the car and ran when we grabbed ahold of Mr. Corson and Thompson. He jumped out of the car and ran.



(Testimony of John E. Foster.)

JOHN E. FOSTER

resumed the stand as a witness by and on behalf of the Government, and testified further as follows:

Redirect Examination

By Mr. Carter:

During the noon recess I made a diagram of the location out there at Sunset. This (indicating on black-board) represents Sunset Boulevard running east and west. This is east and this is west (indicating). This lot here—there is no fence or anything there, to the best of my recollection—is 8801 Sunset Boulevard. There is a little shack standing right there (indicating) that at the time was unpainted—that is, it was unpainted **then**, whether it is painted now or not I don't know. This (indicating) is a street running north and south. However, it doesn't come through on the south side of Sunset; it just goes north off of Sunset. I don't recall the name of this street. [26]

And this (indicating) represents Thompson's car where it was parked. This (indicating) represents the car that appeared there, which car Corson got out of, and the other man—they got out there—and the man who ran was also in this car. (indicating).

This (indicating) is the Davis lot, which is next door, just west of 8801 Sunset.

This (indicating) is the Thompson car, as I said, there. This is where Mrs. Thompson was seated in the car (indicating). This pulled in around here in this driveway and backed up a ways up the hill and pulled back down around slow and stopped just about even with the north side of the driveway coming into the lot. There was a

(Testimony of John E. Foster.)

car parked this side (indicating) across the lot here. It was a Ford convertible.

As well as I recall there was a chain of cars in front of this car that was parked inside of the lot. The car was parked inside on the lot and so that it would bar the driveway so that you couldn't get in.

Then there were other cars in there—I don't recall how many, but there were several other cars parked right along over to here (indicating) facing the street.

This (indicating) is the sidewalk running along through here.

And this (indicating) represents about where Davis was standing and where Thompson and Corson all stood right along [27] beside each other at the edge of the sidewalk—the lot, and then they walked back over across to here (indicating).

This (indicating) is where the transaction took place.

And then there was a bar here (indicating) and a few stores here—and there was a little sidewalk also along here (indicating), and these stores all opened up on it.

I believe those stores were all closed; I don't remember any of them being open except the bar. And there was a place for parking all around over here (indicating). And we pulled in and parked at the edge of the driveway, and our car was on a slight angle so that we were looking directly into the lot here (indicating).

This car pulled right at this end of the lot, and so that we could just barely see in front of those men and see this car parked on the driveway there.

We pulled out of here, pulled across the street almost diagonally across here and pulled in here (indicating)

(Testimony of John E. Foster.)

and headed towards where this car was (indicating). By that time these men were right along in here (indicating). As I pulled in they were walking towards me.

By Mr. Carter: At the place where your three crosses appear I am going to put the initials D. T. and C. (marking). That is where Davis, Thompson and Corson talked? A. That is right.

Q. And where the two crosses appear adjacent to the small shack I will put C. and T. [28]

A. Davis was also over there at one time.

Q. But for the purpose of identifying the chart it would be a different designation than the other one?

Mr. Lavine: I think it should show that Davis was also there at one time.

Mr. Carter: The record so shows, but if we put a D there we will have two places marked with the initials D, T and C.

Mr. Lavine: Put a cross for Mr. Davis.

Mr. Carter: All right. (Marking.)

Mr. Carter: In that case the cross indicates Mr. Davis. And the car parked at the south side of Sunset marked with an F and a T, for Foster and Taylor—the car that you were in—

The Witness: Right.

Mr. Lavine: We have already marked Thompson's car with a T.

Mr. Carter: As Thompson's car, yes. I think that sufficiently identifies the drawing.

#### Recross-Examination

By Mr. Lavine:

This was sometime around 6:30 in the evening. There

(Testimony of John E. Foster.)

was quite a bit of traffic on Sunset Boulevard. There was some traffic. I imagine it was the usual traffic on Sunset Boulevard around 6:30 in the evening. That was the only [29] time I stopped there. I would not say there was a steady stream of cars going by there. As a matter of fact, I did not pay much attention to the traffic there. The only thing I noticed was when we went across that—Mr. Taylor was driving the car and so he could tell you more about the traffic.

As to whether we stopped there a little while to let the traffic go by, I don't remember whether we made any stop to go across the street or not.

This distance across from this point where I was parked on across the street from Sunset Boulevard, over to the first point where I have marked D, T, C, or where Mr. Carter has marked D, T, C, I would say is 100 feet. Anyway, it is the width of Sunset Boulevard, plus the sidewalks on both sides.

They were right on the edge of the sidewalk. As to how far I would say that this point, referring now to the place where my automobile was parked, from the place where the two or three men were at 8801 Sunset Boulevard, I would say that was—it might be five or ten feet farther than the first, not more than 125 feet, giving it all the benefit of the distance.

As I recall there were cars on the Davis lot. There were cars on 8801 Sunset Boulevard, all over on the east side of the lot, however. There was this little booth or little house right on the west side of this lot at 8801 [30] Sunset Boulevard.



(Testimony of John E. Foster.)

I couldn't say how much of the time I was using binoculars. That is very hazy in my mind. I used them several times throughout the day. I used them also earlier in the day to see who was on the lot. And I couldn't say how much of the time—we probably used them during that time three or four times. I was using them to see if I could distinguish Mr. Corson on the lot. I don't recall trying to distinguish Davis, nor to see if I could distinguish Mr. Thompson on the lot, because it was broad daylight and we weren't far enough away to have to use them too much to distinguish anyone. The only time I used them was to try to determine what they had in their hands, but not to distinguish anyone. I had used them earlier on the day. I used them on the side street to see who was on the lot. I didn't know Mr. Corson had anything to do with the lot—I used them to see if Mr. Corson was there, around five o'clock. I used them around that time, probably five or ten minutes.

I had been waiting before Mr. Corson came up to the lot, probably five or six minutes. I don't recall whether I used the binoculars during that time or not. They are small binoculars. I couldn't tell you what kind they are. There is a stamp on it which says "Made in France." And that is all I can tell you about it.

I traded off with my associate officer in looking through these binoculars from time to time. I did not say [31] to him: "I think I see somebody on the lot now." I do not recall, because we could see over on the lot there. We might have said that, but not because of looking through the binoculars, because I could see them as well as I can see you now. As to whether he said while looking through



(Testimony of John E. Foster.)

these binoculars: "I think I see somebody there now," I don't recall such a conversation.

I was not looking through the binoculars at the time that I saw a paper passed from Mr. Corson to Mr. Thompson. I couldn't say whether my associate was looking through the binoculars at that time. I had my eyes glued on the transaction.

#### Redirect Examination

By Mr. Carter:

At that time there were not any automobiles parked between the shack, which is marked on the diagram, and the sidewalk, there in front of it. Neither on the lot nor at the curb, to my knowledge. There was none that came in our vision.

As to whether, when Thompson went over in the location of the Davis lot, which is marked on the chart as D. T. C., and we turned back to the lot at 8801 Sunset, and whether he passed behind the shack, or passed on the side of the shack toward the sidewalk, he passed on the sidewalk—that is, between the sidewalk—I might explain that this shack doesn't come right down to the sidewalk. It is back a ways. And there [32] was no cars parked in here (indicating) because we went back later to get this car out of there, and moved it out of this (indicating on diagram) to this spot here. That was after the transaction. That car was in between here (indicating), between the shack and the sidewalk. Thompson was not ever behind the shack.

At no time did the traffic come between me and what I was looking at, so I would have no reason to particularly notice it.

As to the location of the car in which I was sitting,

(Testimony of John E. Foster.)

this is rather high, this place here (indicating on diagram). In fact, you come up here, and there is a rather mounted effect there, so that is a kind of a hill in here, so that where we were up here we were up high enough so that the cars were in our view, and none of the traffic stopped there, there were no lights there to stop any traffic. Any traffic that was there kept moving and did not slow down.

#### Recross-Examination

By Mr. Lavine:

That place is sidewalk height, referring now to this place (indicating on diagram), referring now to where my car was parked. It is a little higher than sidewalk height. As to whether this other side—this that was parallel across there, I couldn't say whether it was sidewalk height or not, but the view was good. I parked in such a way that I looked through the windshield. As to when I had last wiped the [33] windshield, I couldn't say; the car didn't belong to us, and I didn't wipe the windshield at all. I happened to be in the back seat, sitting right here (indicating on diagram), and I was looking out, and Mr. Taylor was in the front seat of the car, and he could look right straight out there (indicating), and I could look right straight out here (indicating). I didn't have to use the windshield. I was at one time in the front of the car and looked through the windshield, then I got out and moved into the back; right on the right hand side of the back seat. The car I was in was a little light Studebaker, two doors.

(Testimony of John E. Foster.)

Mr. Thompson I would say was approximately 50 years old. His wife I imagine was between 35—around 36, probably 40. I couldn't say she was a much younger woman—that would be just my guess—I would say she was younger, however.

With reference to where I was at the time I was sitting in the automobile. She was parked right—just in the street. As I said before, why, they pulled around here (indicating) and then they pulled around slowly so the front of their car was just about even with the north end of the driveway, but they didn't pull in the curb. She was still in the street.

The distance from this pont marked D. T. C., over to the end of the driveway here I would say that was 100 feet. It could be 150. I don't think it was, but—I don't know just how far—I imagine that 8801 would be 75 feet, say, and [34] they were about 25 or 35—25 to 35 feet inside of the Davis lot there from the imaginary line.

As to whether there were cars parked on both sides of this lot, well, there were automobiles parked—whether there were any parked up here or not, there were cars parked from here over (indicating), but not here (indicating on diagram). There were no automobiles in here. They parked down on this side of the driveway, right over there, and one of them was over here. Now, if there were any up here, I couldn't say. I couldn't say whether cars were parked on the Davis lot; I did not go into the lot.

## JONA H. TAYLOR

a witness called by and on behalf of the Government, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Carter:

I live at 5513 Mullen Avenue, Los Angeles. I am an investigator for the Office of Price Administration. I have been so employed just about a year. I worked for Mr. Foster on this case.

Referring to a man by the name of Edgar E. Thompson, the first time I saw Mr. Thompson was September 2nd. On that date Mr. Thompson was apprehended by Mr. Foster or me. After the apprehension of Mr. Thompson he was subsequently searched. That was done the first time when we arrested him. [35] He was searched again out on the street about two blocks from 8801 Sunset, on two different occasions. The first of those two occasions out near Sunset Boulevard was between 4:30 and 5:00. After he was searched their car and Mrs. Thompson were searched.

Thompson and Mrs. Thompson then drove down Sunset going east, and drove into the lot at 8801 Sunset.

No gasoline coupons were at any time found as a result of this search. That is, referring to the last two searches. Referring to the first search, coupons were found; at the time of the arrest; at the time of the arrest we found several sheets of coupons.

I saw Government's Exhibits 1, 2, 3 and 4 for identification. No sheets of that kind were found on Thompson at the time he was first searched after the arrest. When Thompson went to the lot at 8801 Sunset we followed him, immediately behind his car in the car in which we



(Testimony of Jona H. Taylor.)

were riding, and kept him in our vision at all times. He went in the lot and talked to one of the men on the lot. I saw Corson there at that time. He talked to Corson. I did not see anything pass between them at that time. No article. They didn't come in bodily contact at all.

He remained on the lot possibly five to seven minutes. Then he came out and drove away back to the point where we had searched him. We followed him back. He went back to the lot at 8801 Sunset a second time that evening, at about 6:30. [36] I again searched him before he went back, immediately before he went back. I also searched his car and Mrs. Thompson again. At that time she was still in the car.

Thompson then drove east on Sunset and drove in the driveway in the side street as Mr. Foster described, backing the car out, and headed back down the hill. Mr. Thompson got out of the car and walked across the edge of the corner of the lot and then to Mr. Davis' lot. As he walked past the front of 8801 Sunset he kept looking in and went on down to Davis. I observed him talking to Davis. No article of any kind passed between Davis and him.

Then Mr. Corson drove up then in the Cadillac convertible with the top down at or about the point that it is drawn in this (indicating diagram) to the driveway, with the front of the car on the sidewalk. I was in the car across the street in the driveway headed out. I was in the front seat, on the driver's side of the car, in the place marked on the chart F.T. After Corson drove in with the Cadillac Corson got out and walked over to where D. and C. are here on this drawing, and he talked to them



(Testimony of Jona H. Taylor.)

for a few minutes and then they came across to where X. C. T. is marked. That occurred in front of the shack. That would be between the shack and the sidewalk. Mr. Davis after two or three minutes went back to his lot. Nothing had passed between any of the boys up to that time.

Mr. Corson then reached inside the pocket of his sport [37] coat—he had on something similar to this one—reached inside of the pocket and took the papers out. They were long, as they were shown in the courtroom this morning. They were about 12 inches long and about 3 inches wide. He handed them over to Mr. Thompson at about this angle (indicating). Mr. Thompson started to reach inside of his jacket, and, as it was explained, it was a loafer jacket—what is referred to as a loafer jacket, and he started to reach inside and found he didn't have a pocket there and he then folded them over once and put them in this pocket (indicating). Right hand outside pocket.

As to whether Corson remained present at the same location after he had returned from the Davis lot, or had gone anywhere else, he started toward the back of the lot, and I think he walked probably fifteen or twenty feet toward the back of the lot, and left Davis and Thompson standing there. I don't think Corson went to any other building, or car, or any other place. I did not observe him going anywhere. He was out of my vision for possibly just a moment or two. It was after his return that I saw these papers.

This Exhibit, Government's Exhibit No. 1 for identification, I have seen that before. That is one of the sheets that was taken from Mr. Thompson's pocket.

(Testimony of Jona H. Taylor.)

Government's Exhibit No. 2 for identification is one of the similar sheets taken at the same time.

Government's Exhibit No. 3 for identification was the [38] outside sheet.

Government's Exhibit No. 4 for identification was a third of the size of the other sheets. I referred to one of these sheets as the outside sheet. I did notice some distinction or characteristic about that sheet. The fact that it had a mark on the back of the sheet which we thought came from under the floor mat of an automobile, similar to a mark that would come or occur in that way.

(Witness is asked to fold them up in the form they were in when he saw them passed from Corson to Thompson.)

They were in this position (indicating) when he took them out of his pocket—when he took them out and handed them to Thompson. Then Thompson folded them once, this way (indicating). First he started to put them in his pocket this way (indicating), but then he folded them this way (indicating), and put them in the right hand coat pocket.

Mr. Carter: May the record show that the witness described that the papers were first longways, and about 12 inches in length, and about 3 inches wide when they were taken out, and then folded crossways.

Mr. Lavine: Yes.

Mr. Carter: And may the record also show that there is a loose fold, and not a creased fold on either side.

Mr. Lavine: That is right. May we finish the description?

The Witness: It was folded like that (indicating). [39]

The Court: What is the length of that?

(Testimony of Jona H. Taylor.)

The Witness: 12 inches long by about 3 inches wide.

The Court: When he put it in his pocket how was it folded?

The Witness: Folded it once until it was about 6 inches long and the same width.

The Court: Double thickness.

The Witness: Yes, double thickness.

By the witness:

When I obtained those four sheets, Government's Exhibits 1, 2, 3 and 4 for identification from Thompson they were loose folds—they were all loose folds. The sticker tape on the back of some of it was not on at the time. They were put on by our office in order to preserve them. They had been handled several times, and they were loose, and there was danger of them coming apart—they were loose.

From the time Thompson was searched about 6:30 until the time I took the four sheets from him he was not at any time out of our vision. After I saw the four sheets pass from Corson to Thompson we immediately started the car and drove across Sunset on an angle diagonally, and around, and headed in the driveway. By the time we reached that point Mr. Corson and Mr. Thompson had already started walking, as we started the car toward Mr. Thompson's car, and they arrived at the point at the same time we did.

Mr. Foster came out on the opposite side from me and [40] grabbed Mr. Corson and put him in the car and I jumped in the driver's side, and reached in Corson's pocket and pulled the coupons out. By the "coupons" I mean Government's Exhibits 1, 2, 3 and 4.

(Testimony of Jona H. Taylor.)

I never did see what happened to the man who was in Corson's car. My vision at all times as much as possible was on Thompson and Corson, and I did not see what happened to the man. I saw him in there when Mr. Corson drove up, and I did not pay much attention to him.

### Cross-Examination

By Mr. Lavine:

I was not looking at the men with binoculars when I say I saw the papers pass from Mr. Corson to Mr. Thompson. I was sitting at that time in the driver's seat. Mr. Foster at the time was in the back seat.

The first time I drove up there—the first time that afternoon we drove up past there and searched Mr. Thompson between 4:30 and 5:00. Mr. Thompson was there when I made the search. We had him empty his pockets of everything, and then we reached in his pockets to see that he had no other papers of any type on him.

While I was making that search Mr. Foster and Mrs. Thompson and Mr. Thompson and I were talking, and at that time there was some discussion about him wanting to do everything he could to help, that he didn't want to leave his wife [41] alone. He did not then say that he was pretty much in love with her and that he wasn't going to be locked up any longer than he had to be. At that time he had not told me that he had been convicted of a felony three or four times. I don't remember now when he told me. I don't think he told us, I think we found that.

I made that first search out near 8801 Sunset, outside of his car, by the side of his car. He got out of the



(Testimony of Jona H. Taylor.)

car for the purpose of the search. Emptied his things in the car—his personal belongings. I think he laid them in the seat of the car, and afterwards put them back in his pockets.

After we finished the search of the car and Mr. and Mrs. Thompson we followed his car. I saw him go over to the lot between 4:30 and 5:00. At that time, at 4:30. I was parked across the street on the street itself. My car was headed east. His car was on the edge of the road, on the side street—he had pulled into the lot. I could see his car from where I was. Then I saw him go into the lot. Saw him talk to Mr. Corson immediately after he entered the lot. He remained there talking to Mr. Corson between five and ten minutes.

I saw someone else at the time. There were two other men. They were a little ways away from where Mr. Corson was seated in his car. Mr. Corson was seated in his car, and Mr. Thompson walked up to him, and Mr. Corson got out of the [42] car, and they stood there and talked, and the other men were back of them ten or fifteen feet. There were quite a number of cars on the lot. I would say between eight and twelve. I didn't observe any particular cars except the car that Mr. Thompson went over to, that Mr. Corson got out of at that time.

I did not look in the binoculars at that time.

Mr. Foster was out of the car on the sidewalk somewhere; I don't know exactly where it was.

I remained until Mr. Thompson left. Then I followed him again up to the point where we had searched him before. Then we parted at that point. We had a con-



(Testimony of Jona H. Taylor.)

versation then. We separated about ten minutes later. I was separated from Thompson at that time probably an hour. We met again possibly at six o'clock or a few minutes afterwards. At that time we met at the same point. Mr. Thompson was there first, he and his wife in their car. I drove up and I followed him over to the same point; we searched him first, just as we did before, and then followed him at that time over to the same point; saw him drive in the driveway as I have described before, and back up and come up the hill, and turn around and park there.

I did not see Mr. Corson there when he first drove up the second time. I saw Mr. Davis. Mr. Davis was on his lot. I did not see some other men there at that time. After the defendant drove up I then used the binoculars again, the one [43] time—that is the one time I did use the binoculars. I call them field glasses, they were the ordinary small type binoculars. I adjusted them to my eyes.

As to whether I made out the form of Mr. Corson through the glasses, I didn't need to make out his form through the glasses. I had them adjusted already. We had during the afternoon focused and used them. I had traded with Mr. Foster. As to whether I made any re-adjustment after Mr. Foster handed them back to me, if so, it was so slight that I didn't even notice it. I did not look for a full minute through those glasses—just thirty seconds, at Mr. Corson. At no time could I distinguish that something was being passed from Mr. Corson to Mr. Thompson. You could tell it wasn't a book or a magazine. You could tell that at a distance of 125 feet. You

(Testimony of Jona H. Taylor.)

could see that it wasn't a book. It could have been a light magazine, probably—it was loose paper—but it didn't look like any book or anything like that. We could see very plainly.

I saw Mr. Thompson put something in his right coat pocket. I saw him also reach back into the inside of his pocket with the paper in his hand. That occurred on the 8801 Sunset lot. As to how far back from the sidewalk the men were standing at the time, I would say ten feet, not over fifteen feet.

Then I drove immediately across the street at that time. There was very little traffic at that time going by. [44] I did not stop for any. From the time I left this lot across the street I did not stop until we got over there. My motor was not going at the time I made this observation. It was stopped. I started it immediately. I guess my automobile had the gear shift on the steering wheel. I shifted into gear and then went across the street. When I got over there I stopped my car and stopped the motor when I got out; just as the car started I switched the moter off and had the door open and got out.

Mr. Foster was out first. I heard him say something to Mr. Corson. I did not hear him say, "Now, I have got you." He said, "I have been looking for you for a long time. At last we have got you. And Mr. Corson replied that he did not know what he was talking about, something of that nature. I think he said, "Well, who are you?" Or something to that effect,—something that at the time did not seem to have much bearing on it. He said, "What's the matter?" Or something like that.

Juror Carter: Is there an elevation on the south side of Sunset?

(Testimony of Jona H. Taylor.)

The Witness: As I recall the water runs down there.

The Court: It is a rather high sidewalk, then?

The Witness: It is a very high sidewalk, and the road itself is up a little bit higher than the sidewalk, too. It is a very steep incline going up there.

The Court: How far west on Sunset is that? Is that [45] between LaBrea and—

The Witness: No, that is out on the county strip.

Juror Carter: On the cafe strip.

The Witness: Yes.

Mr. Carter: That will be all.

At this time I offer in evidence Government's Exhibits 1, 2, 3 and 4 for identification.

Mr. Lavine: To which we object on the ground heretofore given.

The Court: The objection is overruled and they will be received in evidence.

(The jury excused.)

The Court: All right. Let the record show the jury is out. All right.

Mr. Lavine: At this time, if your Honor pleases, the defendant moves for a directed verdict. The government has not established all of the elements of the information as charged here. They have failed to show any guilty or unlawful possession of these stamps. They have failed to show any violation of the regulation. They have failed to show that the particular charges as alleged in the information here have been violated. One of the allegations of the complaint, your Honor, Count 1, alleges that Lester Arthur Corson did knowingly, wilfully, and unlawfully have in his possession 800 gasoline ration coupons. They have not met that charge, your Honor. They have

(Testimony of Jona H. Taylor.)

not proved that he wasn't [46] lawfully in possession of these stamps. The same with Count 2.

The Court: All right.

Mr. Lavine: That is our motion.

The Court: All right. Mr. Carter.

Mr. Carter: I was interested in the last part of counsel's motion. I think counsel raised some question about the fact—Might I ask you to state that last part of your motion again? I heard the first part.

Mr. Lavine: There has been no proof offered here that the defendant was not in lawful possession of these stamps.

Mr. Carter: I don't think that the government is compelled to bring in every possible ration board in the country who might have issued stamps, and the burden is left upon the defendant to explain the possession of the 800 double TT stamps, if he lawfully was in possession thereof. Obviously, the only type of proof the government could offer on an issue of that kind would be to bring in every ration board in this State or, for that matter, in the United States, to prove that the government had not issued ration stamps to this individual. I submit the government has made out a case.

Mr. Lavine: Your Honor, in the recent case of Topp here, they sought to raise a presumption which was held to be unlawful—

The Court: There is no evidence of an act of presumption here. I take it, as a matter of fact, that those coupons [47] can be acquired only by persons engaged in transportation. And the evidence does not show he was engaged in transportation, and therefore it is sufficient.



(Testimony of Jona H. Taylor.)

Mr. Lavine: We haven't established in what business the defendant was engaged.

The Court: They showed that he was in possession of the lot. Suppose you found on me coupons of the type that is issued to a person engaged in a transportation business. The very fact that I am not engaged in it is sufficient to show that I am not entitled to the possession. Here a man is shown to own a lot where he deals in second-hand automobiles, and you, in fact, brought out the fact that he bought an automobile from this man, and there is no evidence whatsoever that he is engaged in any business that will entitle him to have gasoline coupons as though he owned a fleet of trucks. There is no presumption there. It is clearly shown there that he is not entitled to have that.

Suppose that you have a man who is supposed to have an A card and he has a T card. Here we have the case where a thief broke in the window in Hollywood and I held that where you found them in his possession, and he is shown by competent evidence that he was not engaged in that business but in another business, that is sufficient for a *prima facie* case. In other words, when you have a regulation, you have an exception. The government doesn't have to prove the exception. So he has to show that he is not of that class. And they have already shown that he is not of that class. [48]

Congress has given them the power to make those regulations. So when he is found with a T card and is shown to be engaged in operating a car lot, that is sufficient for a *prima facie* case.



(Testimony of Jona H. Taylor.)

Mr. Lavine: Exception.

The Court: The motion for a directed verdict will be denied.

Mr. Lavine: Exception.

Mr. Lavine: Now, at this time, your Honor, we move to strike the testimony of the witnesses Foster and Taylor as to all the conversations which they claim to have had with Thompson outside the presence of the defendant.

Mr. Carter: It was all brought out on cross-examination, your Honor.

The Court: There is no testimony offered as to any conversation outside of the presence of the defendant. All that was brought was what you brought out on cross-examination as to how he came to be there. They were very cautious, even omitting the first conversation, and then you brought out the fact that he had agreed after his arrest that he would go to the place and keep this date. And as long as you brought it out they had a right to amplify it. So that motion will be denied.

Mr. Lavine: Exception.

The Court: All right.

Mr. Lavine: And then I again renew my motion as to [48-a] an election as to the counts, your Honor.

Mr. Carter: We will elect to stand upon the transfer [48-b] count, your Honor.

The Court: Count 2?

Mr. Carter: If that is the transfer count.

The Court: All right. Then the government will elect Count 2, and Count 1 will be dismissed. Yes. That is the transfer count.

Mr. Lavine: That is right.

(Testimony of Jona H. Taylor.)

The Court: All right. We will take a short recess, and then I will call the jury and we will go on.

(Recess taken.) [49]

The Court: Let the record show the jury in the box.

Gentlemen of the jury, as a result of certain legal discussions between Court and counsel the issue in this case has been simplified, and the case is now before you only on Count 2, and that is the count which charges the defendant with having transferred ration coupons, and the Count 1, which charged him with possessing them, has been eliminated. So there is only one count left in the information. All right, Mr. Lavine.

Mr. Lavine: At this time, if your Honor please, we offer the file in Case No. 16220, United States District Court, United States of America, vs. Edgar E. Thompson, in evidence by reference.

Mr. Carter: No objection. I don't think it is material, but if counsel wants it in the record, what happened to Mr. Thompson, no objection.

The Court: If there be no objection, I will allow it in. Mr. Thompson is not a witness—I can't see—

Mr. Lavine: Well, it shows that the defendant was going to plead guilty to counts—

The Court: (Interposing) You are then going to compel me to tell the jury what the maximum is that is allowed. If the maximum is ten years and he gets three months, it is one thing, so I warn you if you put that in I

(Testimony of Jona H. Taylor.)

will instruct the jury what the penalty is that could be imposed in that case.

Mr. Lavine: That is satisfactory. I wish your Honor to [52] do that. I want all the facts before the jury.

The Court: That is a fact. Ordinarily you can't refer to penalties, but so the jury will understand whether it was lenient or not, I will have to tell them what penalties could have been imposed on each count. With that understanding it will be received.

Mr. Lavine: All right. We want the record to show that Edgar E. Thompson pleaded guilty to Counts 1 and 2 on an information charging five counts, and he was sentenced to 90 days in jail, on each count, Counts 1 and 2 to run concurrently, and the case was dismissed as to him as to Counts 3, 4 and 5.

And we want the record further to show that as to Count 1, he was charged on September 2, 1943, in the City of Manhattan Beach, in the County of Los Angeles, with possession of 766 type TT gasoline ration coupons, 152 type B coupons, gasoline ration coupons; 216 type C gasoline ration coupons, in violation of ration order 5-C.

In Count 2 he was charged on June 27, 1943, with being in possession in Manhattan Beach within this jurisdiction of 32 type C gasoline ration coupons, and having transferred them—that is an incorrect statement, your Honor. The statement is that on June 27, 1943, in Manhattan Beach he transferred unlawfully to A. F. Thomp-

(Testimony of Jona H. Taylor.)

son 32 type C gasoline ration coupons in violation of ration order 5-C.

In Count 3, on July 6, 1943, in Manhattan Beach, he unlawfully [53] transferred and assigned to A. F. Thompson 48 type C gasoline ration coupons in violation of ration order 5-C; and on August 27, 1943, in Manhattan Beach, he did unlawfully transfer to Luxton Arneson 80 type C gasoline ration coupons in violation of ration order 5-C.

And in Count 5, that on July 1, 1943, in Redondo Beach, he unlawfully transferred 32 type C gasoline ration coupons in violation of ration order 5-C.

The Court: Ladies and gentlemen of the jury in view of the testimony I will state to you that the maximum penalty provided for any such violation which could have been imposed by the Court against Mr. Thompson is one year, and/or a fine of—where is that?

Mr. Lavine: \$10,000, your Honor.

The Court: And/or a fine of \$10,000.

Mr. Lavine: On each?

The Court: On each of the counts. And that the only object of going into this question is to show whether Mr. Thompson in whatever he did may have been influenced by what might possibly be done to him if he assisted the officers. All right.

## LESTER ARTHUR CORSON

called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows: [54]

## Direct Examination

By Mr. Lavine:

My name is Lester Arthur Corson. In the latter part of August, 1943, of this year I was in the used car business, 8801 Sunset Boulevard in the City of Los Angeles. In the latter part of August, 1943, I had some business transaction with a man named Thompson. We bought a Buick convertible sedan from the gentleman. \$1,895.00, I think the full price of it was. The car was shipped in, or driven in, from New York, and he couldn't supply the bill of sale from New York, and the car is still tied up, and we haven't got a clearance as yet.

Mr. Thompson had been on the lot several times during the time we had the first transaction and afterwards, he has been on the lot. He has sold a couple of cars for us, and in fact I bought two more cars from him.

In connection with this transaction I told him about getting the clearance and he said he had to write to New York to Paul Douglas and would have to get a bill of sale notarized back there, and he hasn't done it up to this time.

During the last part of August, a day or two before September 2nd, I had occasion to see Mr. Thompson. He was in there a couple of days before that, and I told him to either take his car back or give me a bill of sale on it. And at that time he took the car out and used it—was going to floor the car. That is, some used car dealer was [55] going to refinance it, because he had our money and he hadn't given any clearance on the car, and there is no clearance on it to date.



(Testimony of Lester Arthur Corson.)

On September 2, 1943, he came on the lot with another automobile—him and his wife—another Buick, convertible Buick, and asked me if I wanted to buy it, and I told him I did if we would get the right price. And he was asking \$2,000.00 for it, and I told him I would give him \$1,800.00 for it. That conversation was I would judge about four o'clock, maybe 4:30, and we talked for quite a while about this car; and another car. He said he would drop back later on, and have a talk with his wife first and see if he could sell the car for \$1,800.00. In fact, I would have given him \$1,850.00 for the car. Then he left the lot.

At that time he didn't say anything to me about any ration stamps. I did not say anything to him about any ration stamps

Prior to that occasion when he had been in the lot a few days before, or a short time before that, he tried to sell me rationing stamps. We had a 1942 radio in a Cadillac and he said that he would trade me some rationing stamps for that—he got it to, I think, \$80, and he finally came back and paid the cash instead of the stamps.

I told him I wouldn't care for any stamps.

Then, on September 2nd, after he left at 4:30 or thereabouts, he said that he would discuss the sale of this other [56] automobile with his wife and let me know about the car. That is what we were talking about on the lot. He was talking to Jerry Davis, and myself and him, and whether or not Jerry Davis was going to buy the car or I would buy it. And Jerry wasn't in position to handle the car at that time. He thought it was too much money. And so I offered him a deal, and he didn't go through

(Testimony of Lester Arthur Corson.)

with it. And that is what we were talking about on the lot.

We met about, I would say, about 6:30 or so that afternoon or evening, and he still wanted \$1,900 for the automobile, and so we met on the lot, and we were talking about it, and we were walking across the lot, and he told me something about he had something in the car that he had bought, and he wanted to get something out of the automobile, and I didn't pay any attention to him, I kept on walking, and as I got to the end of the lot these officers popped up.

He walked over toward the other automobile that was on the lot and opened the door and then he turned around real quick and followed me over there.

I did not at any time transfer or assign any gasoline ration coupons to him. I did not at any time transfer 800 type TT gasoline coupons. I did not go anywhere into my lot and get any 800 TT gasoline ration coupons.

The first time I saw that batch of gasoline ration coupons that they claimed I had was when he pulled them out of his right hand pocket. I never saw the tickets up until [57] that time. He did show me a pink and white slip on the car that was sitting in the street, and I told him it was too much money, and I handed him the slips back. He handed me a white and pink slip on the car, and told me he had the pink on it and if I would give him the cash for it—because we had some trouble on the other car—and he showed me the pink and white on it, but I told him it was too much money.

The car was sitting at that time in the street, and I was walking over toward it to look the car over when the officers drove up.

(Testimony of Lester Arthur Corson.)

The former car was sitting on the first line of cars along, I think it was about the third or fourth car from the driveway. When he had been on my lot the day before, he had not done anything with reference to the car. He had taken the car and he wanted to try to take it out to sell it to somebody else because I hadn't had the clearance on the car, and he was trying to get the money to pay me back.

He always goes to that car, and he liked the car himself and wanted the car back, but so long as we was after him for the clearance on the car, and he said he would buy it back, that that would recover the automobile, and he would like to have it back.

Across Sunset Boulevard from this lot I would say it is 100 feet, maybe 125 feet—most likely 100 feet from where the officers said they were standing to my lot—it would be about 110 or 115 feet. [58]

I did not pay any particular attention to anyone that was coming in or going out there on that afternoon.

There was no chain across my lot. We have no chain on the lot even now. My lot is not watched or guarded at night. It is never guarded. Nobody is there at all at night.

In connection with my transaction with Mr. Thompson that has not even been cleared today, that car. I have all the papers on it, but we are waiting for a bill of sale from New York, and it seemed that the car belonged to Paul Douglas, and he is an announcer across the Seas and we can't get a bill of sale from him.

I have had occasion to talk to Mr. Thompson subsequent to my arrest, on this occasion I talked to him up

(Testimony of Lester Arthur Corson.)

here in this building where he appeared in Court. After his arrest. He said that he had spent 25 years in prison of his life, and he didn't want to spend any more, and he was kind of ashamed of what he had done to me, but that was the only way out. He said he was very much in love with his wife and didn't want to go back to prison again. He figured he would be a four or five-time loser and he would get life—that is what he told me.

#### Cross-Examination

By Mr. Carter:

I did not know that Thompson had a prior conviction before this date that he told me this in the Federal Building. I did not know that before. All I know about that is [59] what he told me on that date. I have no evidence of it. He told me he was going straight—when we bought the car. When he told me that here in the courtroom I didn't pay much attention to that. I don't attach much significance to that now.

I am a used car salesman. I am not in the trucking business. I never had issued to me by any Rationing Board Government's Exhibits 1, 2, 3 and 4. I don't claim to have any right to the possession of these.

On that lot that evening Mr. Thompson handed me a pink slip on this particular automobile and I handed it back to him. I did not take something out of my inside pocket. The only paper I had was when he handed me the pink and the white slip, and I handed it back to him.

Q. Who is engaged in business with you on this lot?

Mr. Lavine: I believe that is incompetent, irrelevant, immaterial and not proper cross-examination.



(Testimony of Lester Arthur Corson.)

The Court: That is all right; he has referred to the transactions, which may be inquired into.

The Witness: You want to know the name?

Q. By Mr. Carter: Yes.

A. Louis Vatagliano.

By the witness:

I work for Louis Vatagliano. I have been associated with Louis Vatagliano about three months.

Thompson came to my lot at 4:30 in the afternoon of [60] September 2nd and stayed about ten minutes left, and came back at 6:30. I talked to him on both occasions.

The investigator run up to Thompson and walked right up to him and took the papers out of his pocket. I wasn't watching completely what he was doing. I saw the gentleman rush up and take some papers. Whether he had them in his hand or his pocket, I don't know. Later on the papers were not opened up. This was the first time I ever saw the papers opened up, was right here. These men did not tell me who they were, or that they were from the OPA. He said: "My name is Jack Foster." That is all he said. I do not know who Jack Foster is. I don't remember. I knew at that time, I heard his name mentioned.

Q. By Mr. Carter: Mr. Corson, have you previously been convicted of a felony?

The Witness: No, sir—

The Witness: I have been up on a liquor charge one time, but—it probably was—I don't know whether it was a felony or not—it was a liquor violation.

Q. By Mr. Carter: Weren't you convicted of a felony in the State of Washington along with Mr. Paul Wessell?



(Testimony of Lester Arthur Corson.)

A. I don't know; it might be, a number of years ago—I don't know whether it was a felony.

(The following proceedings took place at the bench out of the hearing of the jurors.)

Mr. Lavine: It appears from the document that the [61] defendant was placed on probation, and sentence was suspended, and that he was then placed in charge of the parole officer of the State Reformatory.

The Court: You don't have any expunging—it would have to be a felony in the Federal Court.

Mr. Lavine: That would be a juvenile.

The Court: An offense is sufficient in the Ninth Circuit.

Mr. Lavine: I understand it would have to be a felony in that State.

The Court: As a matter of fact he should be asked if he has been convicted of an offense—the record will show what it was. He answered he didn't know. If you want me to give instructions, I will—the only thing is that it will affect his credibility as a witness, that is all.

(Proceedings before bench concluded.)

Mr. Carter: (To Clerk) Mark that for identification.

The Clerk: 5 for identification.

Q. By Mr. Carter: I show you a photostatic copy of a judgment and sentence in the State of Washington and ask you to look that over. Read it.

A. I never denied being there.

The Court: That isn't the point.

Now, do you still quibble? Are you the man mentioned in that commitment? [61-a]

The Witness: Yes.

The Court: All right.

(Testimony of Lester Arthur Corson.)

Mr. Lavine: May the record show that I object to it as incompetent, irrelevant and immaterial, no foundation laid and prejudicial conduct. I realize that the Ninth Circuit has so ruled, but I want my objection in the record.

Mr. Carter: At this time I offer in evidence Government's Exhibit 5, which has been marked for identification.

Mr. Lavine: To which I object as incompetent, irrelevant and immaterial; no proper foundation.

The Court: Is that a certified copy?

Mr. Carter: An exemplified copy.

The Court: Exemplified by the Clerk of the Court?

Mr. Carter: Clerk and Judge.

The Court: Clerk of the Superior Court of King County?

Mr. Lavine: I object to it, and the prejudicial misconduct.

The Court: Objection overruled.

Mr. Lavine: Exception.

The Clerk: Government's Exhibit 5 in evidence.

Mr. Carter: That is all.

Redirect Examination

By Mr. Lavine:

Q. Mr. Corson, how old were you in 1923—20 years ago? A. 26. [61-b]

Q. And in this charge you were—the sentence in that matter was suspended, wasn't it? A. Yes.

Q. And it was a sentence to a reformatory?

A. That is right.

Q. Which was suspended? A. Yes, sir.

The Court: I think there should be a statement to the jury of the nature of the offense. Nobody has said what

(Testimony of Lester Arthur Corson.)

he was charged with. Either the entire thing should be read—(document handed to Court). He was charged with grand larceny?

Mr. Carter: I will make a statement to the effect that Mr. L. A. Corson, who defendant admits is he, was convicted on August 21, 1923, in the Superior Court of the State of Washington, in and for the County of King of the crime of grand larceny; and judgment was entered that he be punished by confinement at the reformatory of the State of Washington at Monroe for the term of not less than one year and not more than fifteen years. "It is further ordered that this sentence be suspended during the good behavior of said defendant L. A. Corson and until the further order of the court, and the defendant is placed in charge of the parole officer of the State Reformatory at Monroe, Washington." Dated the 23rd day of August, 1923.

The Court: Gentlemen, I might as well tell you now that the fact of a previous conviction is offered merely to [61-c] impeach the defendant as a witness because that is one of the methods in which the defendant's credibility as a witness may be impeached. It is not to be considered as evidence from which an inference of guilt in this case may be drawn. It is merely offered for whatever consideration you may give it as to his credibility as a witness.

(Both sides rest.)

Mr. Lavine: Defendant rests.

Mr. Carter: No further evidence on the part of the Government.

Mr. Lavine: I renew the motion for the directed verdict as heretofore given.

The Court: Motion will be denied.

(Argument of counsel follow:)

The Court: Gentlemen, of the jury I am about to instruct you as to the principles of law which you are to apply as the jury in the case. The instructions are not very lengthy. They have all been written out and I shall read them to you carefully and distinctly, and if you desire, when you go into the jury room to deliberate, the [61-d] instructions which will be filed with the Clerk as they have been read to you, they will be sent out to you, and you also have the right to have any of the exhibits brought to you during your deliberations.

The law of the United States permits a judge to comment on the facts in the case. Such comments are mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in each case. However, it is not my custom to exercise this right nor shall I exercise it in the present case. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without my aid. However, it is the exclusive province of the Judge of this court to instruct you as to the law that is applicable to the case, in order that you may render a general verdict upon the facts in the case, as determined by you, and the law as given to you by the Judge in these instructions. It would be a violation of your duty to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the court,—a wrong for which the parties would have no remedy, because it is conclusively presumed by the court and all higher tribunals



that you have acted in accordance with those instructions as you have been sworn to do.

You are here for the purpose of trying the issues of [62] the fact that are presented by the allegations in the information and the plea of the defendant thereto. This duty you should perform uninfluenced by pity for the defendant or passion or prejudice on account of the nature of the charge against him. You are to be governed, therefore, solely by the evidence introduced in this trial, and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion or public feeling. Both the public and the defendant have a right to demand, and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The offense with which the defendant is charged is:

Violation of Section 1394.8177 Ration Order 5C.

In this connection, you are instructed that the information on file herein is a mere charge or accusation against the defendant, and is not any evidence of the defendant's guilt, and no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such information on file.

It is the duty of the jury to decide whether the defendant be guilty or not guilty of the offense charged, considering all the evidence submitted to you in the case. [63]

The jury are the sole and exclusive judges of the effect and value of the evidence submitted to you in the case.



The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence, should be taken into consideration, for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testified; his interest in the case, if any, or his bias or prejudice, if any, against one or any of the parties, by the character of his testimony, or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence; and the jury are the exclusive judges of his credibility.

A witness may also be impeached by evidence that he made, at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial; and a witness may also be impeached by proof that he has been convicted of an offense.

A witness false in one part of his or her testimony [64] is to be distrusted in others; that is to say, the jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point: and the jury, being convinced that a witness has stated what was untrue, not as a result of a mistake or inadvertence, but wilfully and with the design to deceive, must treat all of his or her testimony with distrust and suspicion and reject all unless they shall be convinced that notwithstand-

ing the base character of the evidence, that he or she has in other particulars sworn to the truth.

The law does not require any defendant to prove his innocence, which in many cases might be impossible, but on the contrary, the law requires the Government to establish his guilt and that by legal evidence and beyond a reasonable doubt.

The presumption of innocence goes with the defendant throughout the whole trial, even till the verdict is rendered, and this presumption of innocence outweighs and overbalances all suspicions and suppositions, and can only be destroyed by proof beyond a reasonable doubt.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find the defendant not guilty. You cannot find the defendant guilty unless from all the evidence you believe him guilty beyond a reasonable doubt. [65]

A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the Government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, you have a reasonable doubt; but if, after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Reasonable doubt is not a mere possible doubt; because

everything relating to human affairs, and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

While the defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credibility and effect and value of the evidence of any other witness and the tests for determining credibility of witnesses as given you, in another part of the instructions, are to be [66] applied to his testimony alike with that of all other witnesses.

In this case, there is evidence that the defendant has been previously convicted of an offense.

This is not to be considered as evidence of his guilt of his present offense. It is merely offered to impeach the defendant as a witness.

Notwithstanding such conviction, you may, if his testimony carries conviction to you, give it full credence.

There are two kinds of evidence by which the Government may sustain the charges laid in an information--the one is known as direct and positive; the other, as indirect or circumstantial. Evidence is said to be direct and positive when the witnesses have testified of their own knowledge to matters having a direct bearing upon the issues in the case. Evidence is said to be indirect or circumstantial, on the other hand, when the witnesses testified to matters having only an indirect or circumstantial relationship to the issues in the case.

The law requires that all the circumstances necessary to show guilt must, themselves, be shown by evidence beyond a reasonable doubt; that these circumstances must all be consistent with a defendant's guilt and that they must all be inconsistent with any reasonable theory or hypothesis except that of guilt.

If the circumstantial evidence measures up to all the [67] foregoing requirements, it is the duty of the jury to return a verdict of guilty. If it fails to do so, in any one of such particulars, your verdict should be not guilty.

Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provision of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

Section 1394.8177 of Ration Order 5C reads in part:

“(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.”

The word “assign” is defined as “to transfer or make over to another, especially to transfer to, and vest in certain persons called assignees, the property in question. To “transfer” in law is the conveyance of right, title or property, either real or personal, from one person to another.



It is incumbent upon the government to prove beyond a reasonable doubt that the defendant on or about September 2, 1943, in the County of Los Angeles did knowingly, wilfully, [68] and unlawfully assign and transfer 800 type TT gasoline ration coupons, that they were valid coupons issued by a rationing board of the United States, and that he transferred them to Edgar E. Thompson, in a manner other than in accordance with Ration Order 5C, as amended, and as again amended. The Government must prove the charges strictly as made. If you have a reasonable doubt as to the proof of any of these elements, or if the Government has failed to prove any of them, beyond a reasonable doubt, you must acquit the defendant of Count Two of the Information.

Doing or omitting to do a thing knowingly and wilfully implies not only a knowledge of the thing, but a determination with a bad intent to do it, or to omit doing it.

The word "wilfully" denotes an act which is intentional or knowing, or voluntary, as distinguished from accidental. But when used in a criminal complaint, it is generally meant an act done with a bad purpose. The word is also employed to characterize a thing done without ground for believing it is lawful, or conduct marked by careless disregard whether or not one has the right so to act.

You are instructed that mere association whether through business transactions or otherwise, of one person with another who may be engaged in the violation of law does not make the person so associating guilty of crime.

Your first duty on retiring to your jury room to begin



your deliberations of this case will be to select one of [69] you to act as foreman.

The jury in a Federal Court is known as a common law jury, that is, both in civil and criminal cases it requires unanimity to reach a verdict. In other words, all twelve of you must agree before any verdict can be returned.

For your assistance the Clerk has prepared a form of verdict which is entitled: "In the above-entitled court and cause. We, the jury in the above-entitled cause find the defendant, Lester Arthur Corson, ....., as charged in the second count of the Information. Los Angeles, California, November ....., 1943. ...., Foreman of the jury."

If you find the defendant guilty, you will insert the word "guilty" in the place indicated thereon. And if you find the defendant "not guilty", you will insert the words "not guilty" in the place indicated.

Are there any exceptions to the charge as given by the Court?

Mr. Lavine: Yes, your Honor, the defendant excepts to that portion of the charge that any regulation or rule that is advanced by an administrator of the ration order under the War Powers Act, is a violation of law as we have heretofore argued, as a matter of law. That instruction as to the "Second War Powers Act" as to any rule or regulation or any statement under it, and especially Ration Order 5C. We contend that since this regulation, as amended, and as [70] subsequently amended, was at the election of an administrator, and was not in effect at the time the Second War Powers Act was passed; that that does not constitute a violation of law, and we except

to those portions of the instructions on those grounds.

And we therefore say that it would be an unconditional delegation of the powers of Congress to enable such an administrator or board to create a crime by executive order.

The Court: A portion of those instructions were taken from the instructions you yourself proposed, Mr. Lavine.

Mr. Lavine: Not that one that I am referring to, your Honor. The one I am referring to now is one that your Honor gave from the Government's instructions.

The Court: The portion of the definition of the section about Ration Order C, is that what you mean?

Mr. Lavine: That is it. Exception noted.

The Court: All right.

Gentlemen of the jury, it is the right of either party to except to instructions given by the Court, and it must be done in open Court in criminal cases, in the presence of the jury, and the idea is that Courts may be in error, and the only way to call the error to the attention of the Court is to do it right at the time.

However, the point raised by Mr. Lavine has already been ruled on by me, and I shall not modify the instruction in any manner at all following his suggestions. You are [71] instructed that the instructions that I have given you stand as given, as I read them to you.

All right, the Clerk will swear the bailiffs.

Juror No. 2: Could I ask the counsel for the Government one question?

The Court: No, you cannot. No intimation of un-

constitutionality enters into your considerations. I have already considered that it is constitutional law, so that any statement he made to me I wouldn't allow him to argue that, but any statement he made is merely a statement that is addressed to me. You have no right to determine whether a law is constitutional or not.

Juror No. 2: No, it was not that, your Honor.

The Court: It is not permissible to ask any question of counsel. They are not under oath and they cannot answer questions as a witness would. Swear the bailiffs.

(Bailiffs sworn.)

The Court: You will now be taken in charge by the officers in the Court and begin your deliberations in the case.

(Jury retires.)

The Court: Gentlemen, we will stand at recess until we hear further from the jury.

(Recess taken.)

The Court: Let the record show the defendant in Court with counsel and the jury has returned to the [72] courtroom.

Gentlemen of the jury, have you arrived at a verdict?

The Foreman: We have.

The Court: Will you hand the verdict to the bailiff, who will hand it to the Clerk.

The Clerk will read it.

The Clerk: "In the District Court of the United States, Southern District, United States of America' vs. Lester Arthur Corson, No. 16260-Criminal. We, the jury in the above-entitled case, find the defendant, Lester Arthur Corson, guilty as charged in the second count of

the Information. Los Angeles, California, November 5, 1943, Ralph B. Ottun, Foreman of the jury."

So say all of you, gentlemen?

(The jury indicates assent.)

Mr. Lavine: Poll the jury, your Honor.

(Jury polled.)

The Court: The Clerk will enter the verdict. [73]

(The following instructions were requested by the Defendant and refused by the Court.)

Defendant's Instruction No. 1.

You are instructed that if you find the defendant guilty of any offense you can find him guilty only of one of the two counts since the act of selling and transferring gasoline coupons necessarily involves possession of them.

Defendant's Instruction No. 2.

The defendant is entitled to the benefit of a reasonable doubt as to each count in the information as though it were a separate and distinct information. It is incumbent upon the government to prove beyond a reasonable doubt and to a moral certainty that the defendant actually possessed 800 type TT gasoline ration coupons of the United States, that they were lawful and bona fide ration coupons issued by a rationing board of the United States, and that he possessed them on or about September 2, 1943 in the county of Los Angeles, State of California; further, that the defendant was not the person, nor the agent of the person, to whom said gasoline ration coupons had been issued by a war price and ration board.

If the government has failed to prove any of these material elements beyond a reasonable doubt you must acquit the defendant as to count one of the information.



As to count two of the information it is incumbent upon the government to prove beyond a reasonable doubt that the defendant on or about September 2, 1943 in the county of Los Angeles did knowingly, wilfully and unlawfully assign and transfer 800 type TT gasoline ration coupons, that they were valid coupons issued by a rationing board of the United States, and that he transferred them to Edgar E. Thompson in a manner other than in accordance with ration order 5c, as amended. The government must prove the charges strictly as made. If you have a reasonable doubt as to the proof of any of these elements, or if the government has failed to prove any of them beyond a reasonable doubt you must acquit the defendant of count two of the information.

Defendant's Instruction No. 3.

You are instructed that the word "possession" is defined as that which anyone occupies, owns or controls. In law it is the act, fact or condition of a person's having such control of property that he may legally enjoy it to the exclusion of all others having no better right than himself.

The word assign is defined as "to transfer or make over to another, especially to transfer to, and vest in, certain persons, called assignee, the property in question.

To "transfer" in law is the conveyance of right, title or property, either real or personal, from one person to another.

Defendant's Instruction No. 4.

You are instructed that you cannot convict on mere



speculation, conjecture or guesswork. The government must prove its case beyond a reasonable doubt or the defendant is entitled to an acquittal.

Defendant's Instruction No. 5.

You are instructed that mere association whether through business transactions or otherwise of one person with another who may be in violation of law does not make the person so associating guilty of crime.

Exceptions.

1. The defendant excepts to the order of the District Court refusing to quash and dismiss the information on each ground set up in the motion to quash and dismiss the information.

2. The defendant excepts to the order of the District Court overruling the demurrer to the information.

3. The defendant excepts to the order of the District Court refusing to set aside the information on the ground that it was not filed in accordance with section 591 U. S. C. A. and section 995 of the Penal Code of California, and on the ground that there is no reasonable and probable cause.

4. The defendant excepts to the order of the District Court refusing to set aside the information on the ground that it violates the Fifth Amendment to the Constitution of the United States.

5. The defendant excepts to the order of the District Court sustaining jurisdiction of the information on constitutional grounds.

6. The defendant excepts to the order of the District Court refusing to grant the motion in arrest of judgment.

7. The defendant excepts to the order of the District Court pronouncing judgment in this case.

8. The defendant excepts to the order of the District Court holding that the information states a public offense against the laws of the United States.

9. The defendant excepts to the order of the District Court denying the defendant's motion for a directed verdict at the close of the Government's case and at the close of his own case.

10. The defendant excepts to the ruling of the District Court holding that section 1394.8177 (c) of Ration Order 5C, inherently and as construed in this case is constitutional, and in holding that it does not attempt to create a crime by executive order.

11. The defendant excepts to the ruling of the District Court that there is constitutional or statutory authority for Ration Order 5C as herein construed and applied.

12. The defendant excepts to the order of the District Court denying the motion for a directed verdict on the grounds of the insufficiency of the evidence.

13. The defendant excepts to the instruction of the Court as follows:

“Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provision of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

“Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

“Section 1394.8177 of Ration Order 5C reads in part:

“(b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.’ ”

Morris Lavine

Attorney for Appellant.

## Stipulation.

It is stipulated that the within Bill of Exceptions be settled, signed, and engrossed.

United States of America

By Charles Carr,

U. S. Atty.,

By James M. Carter

Ass't. U. S. Atty.,

Attys. for Plaintiff,

Morris Lavine

By Milton B. Safer

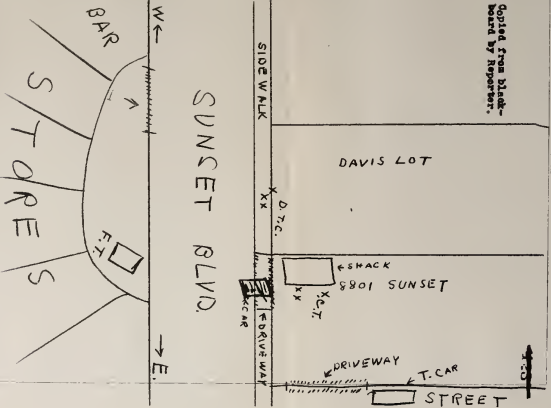
Atty for Dft.

4/19/44

(Photos.)









In the District Court of the United States

Southern District of California

Central Division

No. 16260 Cr.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LESTER ARTHUR CORSON,

Defendant.

ORDER APPROVING BILL OF EXCEPTIONS.

An order approving the Bill of Exceptions having been presented to this Court and having been amended to correspond with the facts, is now settled, signed, and made a part of the records within the term and within the time fixed by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: April 19, 1944.

Leon R. Yankwich

United States District Judge

Rec'd copy of the within Bill of Exceptions this 30th day of March, 1944. Charles H. Carr, United States attorney; by James M. Carter, ass't U. S. Atty.

[Endorsed]: Filed Apr. 19, 1944.

[Endorsed]: No. 10607. United States Circuit Court of Appeals for the Ninth Circuit. Lester Arthur Corson, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed April 28, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for  
the Ninth Circuit.

[Title of Circuit Court of Appeals and Cause.]

ORDER RELIEVING DEFAULT AND ENLARGEMENT OF TIME.

Upon reading and filing the petition and affidavit of Morris Lavine, attorney for appellant, for an order of this court granting relief from default in filing and settling a bill of exceptions and assignment of errors in this cause, and the court being fully advised in the premises and good cause appearing therefor,

It is hereby ordered that appellant and his counsel, Morris Lavine, be and are hereby relieved of default in lodging a proposed bill of exceptions and assignment of errors in this cause.

It is further ordered that appellant have to and including March 31, 1944, within which to lodge his proposed bill of exceptions and file his assignments of error in this cause; and that the Government have to and including April 15, 1944 within which to file proposed amendments; and that the District Court have to and including April 29, 1944 within which to settle and engross said bill of exceptions.

Dated: March 21, 1944.

Curtis D. Wilbur

Albert Lee Stephens

United States Circuit Judges

[Endorsed]: Filed Mar. 21, 1944.



[Title of Circuit Court of Appeals and Cause.)

### ASSIGNMENT OF ERRORS.

Appellant assigns the following errors in the record:

1. The District Court of the United States erred in overruling the defendant's objections to the information and each count thereof, that said information failed to charge an offense against the laws of the United States.
2. The District Court erred in holding that Ration Order 5C, section 1394.8177(c), inherently and as construed and applied in this case is constitutional, and in overruling the objection that it attempts to create a crime by executive order.
3. The District Court erred in holding that the Act authorizes the issuance of the regulation by the persons who issued them.
4. The District Court erred in holding that the Act and the orders under it are not violative of the Fifth Amendment to the Constitution of the United States, and that they are too vague, indefinite and uncertain to constitute a public offense.
5. The District Court erred in overruling each and all of the grounds of the demurrer and each and all of the grounds of the motion to quash and dismiss the information.
6. The District Court erred in overruling the motion to set aside the information on the ground that it was not filed in accordance with section 591 U. S. C. A. and section 995 of the Penal Code of California.
7. The District Court erred in overruling the objec-

tion that there was reasonable and probable cause to arrest the defendant.

8. The District Court erred in overruling the objection that the Fifth Amendment to the Constitution of the United States, in its due process clause, was violated.

9. The District Court erred in refusing to grant the motion in arrest of judgment.

10. The District Court erred in failing to direct the verdict at the close of the Government's case and at the close of the defendant's case, to which exception was duly taken.

11. The District Court erred in instructing the jury that Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

12. The District Court erred in failing to grant the motion for a directed verdict on the ground of insufficiency of the evidence.

13. The District Court erred in giving the following instruction:

"Any person who wilfully performs any act prohibited or wilfully fails to perform any act required by any provision of the Second War Powers Act, or any rule, regulation or order issued thereunder, shall be guilty of an offense.

"Ration Order 5C is a rule, regulation or order issued under and pursuant to the authority contained in the Second War Powers Act.

“Section 1394.8177 of Ration Order 5C reads in part:

“ (b) No person shall transfer or assign and no person shall accept a transfer or assignment of any coupon book or any bulk, inventory or other coupon (whether or not such book was issued as a ration or as part of a ration book) or other evidence, except in accordance with the provisions of Ration Order No. 5C.’ ”

For which errors appellant prays for a reversal of the judgment.

Morris Lavine

Attorney for Appellant

Received copy of the within Assignment of Errors this 30th day of March, 1944. Charles H. Carr, United States attorney; by James M. Carter, Ass't. United States attorney.

[Endorsed]: Filed Apr. 28, 1944.

[Endorsed]: Filed Mar. 30, 1944.